

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

CASE NO. 3:17-cv-02278-X

CHARLENE CARTER,

Plaintiff,

v.

SOUTHWEST AIRLINES CO. and  
TRANSPORT WORKERS OF AMERICA,  
LOCAL 566,

Defendants.

TRANSCRIPT OF THE TRIAL  
BEFORE THE HONORABLE BRANTLEY STARR  
UNITED STATES DISTRICT JUDGE

V O L U M E 7

Dallas, Texas

July 13, 2022

8:45 a.m.

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8 Proceedings reported by mechanical  
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1 - P R O C E E D I N G S -

2 -o-

3 THE COURT: Thank you.

4 You can be seated.

5 Okay. So we should do appearances on this  
6 final day. Let's go ahead and start with  
7 Southwest -- no -- start with Carter.

8 MR. GILLIAM: For Plaintiff Carter,  
9 Matthew Gilliam, Matt Hill, and Bobby Pryor.

10 THE COURT: Thank you.

11 MR. McKEEBY: For Southwest, Paulo McKeeby  
12 and Brian Morris.

13 THE COURT: Thank you.

14 MR. GREENFIELD: And on behalf of the  
15 Union, Adam Greenfield, Edward Cloutman III, and our  
16 corporate representative, Michael Massoni.

17 THE COURT: Thank you.

18 So eagle-eye McKeeby spotted, in  
19 Questions 10 and 11, we used the three terms,  
20 "religious beliefs, practices, or observances," in a  
21 different order on 10 and 11.

22 I was going to ask y'all's permission to  
23 maybe just saying a side comment after I read  
24 Question 11. So I'll have read 10, and then I will  
25 read Question 11.

1                   And my question would be this. Can I say,  
2 "Jury, as an aside, we used the three same words but  
3 in a different order. None of us intend those to  
4 have a different meaning."

5                   And that is true throughout the charge,  
6 because there are probably other places too.

7                   So does anyone have an objection to me  
8 doing that, and then we don't reprint or have jury  
9 notes?

10                  MR. GREENFIELD: No objection, your Honor.

11                  THE COURT: Any concerns with that? Or if  
12 there is better phrasing, then I'm happy to --

13                  MR. GILLIAM: None, your Honor.

14                  THE COURT: Okay. Thanks for spotting it.  
15 Because, I mean, we could get a jury note  
16 on that.

17                  MR. GILLIAM: Just for the record, I don't  
18 think she got it. No objection from Carter.

19                  THE COURT: Okay. Got it. Thank you.

20                  It would be the first jury note that we  
21 could actually give a satisfactory answer to, right?  
22 All other jury notes get crap answers, but that one  
23 we could actually knock out of the park.

24                  Okay. I'm making a note here. These  
25 three words have the same meaning throughout even if

1 in a different order.

2 Okay. What else should we talk about that  
3 y'all are thinking through? I don't have to sit up  
4 here and filibuster, we've got no more exhibits to  
5 go through, but I want to make sure if y'all have  
6 anything you need to run by me before we start.

7 So just the reminder, please don't object  
8 during someone else's closing unless it's a limine  
9 point that we've got to patrol right then, and then  
10 I will call voluntarily for a sidebar at the end of  
11 everyone's time and just ask if anyone has anything  
12 that I need to address.

13 Mr. Pryor, I think I told your team  
14 yesterday that I allow plaintiffs to save up to  
15 10 minutes of their closing time for rebuttal for  
16 the last word.

17 MR. PRYOR: We're following that. Thank  
18 you, your Honor.

19 THE COURT: So I will flag that for the  
20 jury, just because if I tell them you're going to  
21 close in order, they are thinking, Why is Pryor  
22 getting back up? So I just want to forecast  
23 expectations for them.

24 My guess is we are going to have to take a  
25 lunch break at some point. I'm not going to break



1 in anyone's closing. So I'm just going to be  
2 watching the clock, and if we're somewhere in the  
3 11:30 to 12:30 range and someone has sat down, then  
4 I'm going to think about it.

5 I may call for a sidebar to figure out if  
6 it is okay to break before that next person's  
7 closing. Does that make sense?

8 We'll probably take a break after I read  
9 the charge if it goes on for a long time. I just  
10 don't know how long it is going to take. It may  
11 take over an hour. But I will try to be efficient  
12 without just speed-reading it.

13 Other questions, thoughts, concerns?

14 MR. PRYOR: Your Honor, there was some  
15 mention of this yesterday, I wasn't here for it.

16 In terms of once the jury is in the box in  
17 the jury room, what is your rule on how we have to  
18 be here? I mean, I live 15 minutes away, but if you  
19 include getting through security, it's probably 20  
20 or 30.

21 So I'm happy to stay here. We will always  
22 have someone here. But I just want to make sure we  
23 do what you tell us.

24 THE COURT: I'll say as long as you have a  
25 person here, that is great. And, obviously, even if

1 there is one lawyer who needs to call back in to  
2 someone else for a jury note, that is fine by me. I  
3 would say you can even have one person within  
4 15 minutes of clearing security getting here.

5 And that is for today. Tomorrow Kinkeade  
6 may loosen the rules because he may want to cover  
7 this from home, too. So I will ask, we will ask him  
8 today what his preference is for y'all.

9 But as long as you can have one lawyer  
10 here within 15 minutes, that is good.

11 My protocol is if we get a jury note, we  
12 will scan it and email it out to y'all and say, Hey,  
13 can y'all come back?

14 And I will also ask y'all after we're done  
15 closing and the jury goes back, I think we probably  
16 have cell phone numbers, but if you can get them to  
17 Mr. Frye, we can keep a phone tree, and then call  
18 people if there is not a quick response to an email  
19 saying there is a jury note.

20 MR. PRYOR: One other thing.

21 THE COURT: Yes, sir.

22 MR. PRYOR: You mentioned yesterday it  
23 might take you an hour and a half to read this. It  
24 is 60-something pages long. It's mind-numbing at  
25 some point, I'm sure, for the jury.

1                   Is it possible to have the morning break  
2 after the reading, or is it just going to depend on  
3 how long it takes?

4                   THE COURT: That's my plan. And honestly,  
5 even if it takes as short as an hour, I think it's  
6 probably good for the jury to get up, use the  
7 bathroom, stretch their legs, before coming back to  
8 refocus on closing. So I will probably call a break  
9 regardless of how long it takes.

10                  MR. PRYOR: Thank you.

11                  THE COURT: And then we will see  
12 break-wise, in between closings and that lunch  
13 break, I told you I'm targeting anywhere in the  
14 11:30 to 12:30 range.

15                  Any other questions?

16                  Exhibit lists. So I shrunk it down this  
17 morning just to the exhibits that were admitted. So  
18 Mr. Frye is going to be emailing that to y'all.

19                  I also have the thumb drive with the  
20 version of the exhibits that were admitted. We  
21 scanned 15A. I have the redactions that Mr. Hill  
22 sent me.

23                  MR. PRYOR: I'm informed by my office that  
24 the hard copy, bound hard copies are on the way  
25 here.

1 I haven't looked at it to check it, number  
2 one; and number two, I don't know what type of index  
3 there is. That would be things that we would -- we  
4 would work with opposing counsel on to make sure it  
5 is comfortable with them.

6 But it may not be instantaneous after  
7 closing that we could send them back. We will have  
8 to confer a little.

9 THE COURT: You will have to confer.

10 And I will say the exhibit list I put  
11 together should hopefully be your index. If not,  
12 then there is something wrong with my list or --

13 MR. HILL: I've got two different versions  
14 coming because I wasn't sure exactly which ones  
15 were --

16 THE COURT: Okay.

17 MR. HILL: I'm sorry.

18 I've got two different versions coming  
19 depending on which the Court prefers.

20 One has just the exhibit number and the  
21 description, and then the other has the exhibit  
22 number, the description, the witness, and the date  
23 of admission.

24 THE COURT: Sure.

25 MR. HILL: Which is kind of what yours

1 has. And I'm not sure which of those you prefer.

2 THE COURT: Sure. Honestly, I'm fine with  
3 the latter one because that is the one I'm giving  
4 them. I have no problems with you giving them a  
5 shrunk-down version, but sometimes it will jog their  
6 memory that this came in with this witness.

7 MR. HILL: Okay.

8 THE COURT: Okay. So I will send those  
9 back once y'all have signed off that the index and  
10 the hard copies are good.

11 The same thing with my electronic version.  
12 We will let you see those over email and then  
13 Mr. Frye will have you sign a form saying you are  
14 good with the exhibit list.

15 So we try to get those back as soon as we  
16 can. We'd love to get at least the electronic  
17 exhibits back to them by the time they are done  
18 picking a foreperson.

19 I always find it embarrassing if a jury  
20 renders a verdict before I get the exhibits back in.  
21 All right? So I just view that as on me as a  
22 professional, I'm trying to do my job getting them  
23 exhibits.

24 But electronic should be quick, and then  
25 hard copy as soon as y'all can thumb through and

1 make sure it's an accurate set, and then we will be  
2 good to go.

3 Any other questions?

4 Okay. So I will go off the bench. Make  
5 sure y'all think about your closing. Right at 9, if  
6 we've got everyone here, then we will come back on  
7 the bench and we'll start going.

8 Thank y'all very much. See you in a bit.

9 Court is in recess.

10 THE COURT SECURITY OFFICER: All rise.

11 (Recess.)

12 THE COURT SECURITY OFFICER: All rise.

13 THE COURT: They are ready. Are y'all  
14 ready? Okay. I'm ready. Let's do it.

15 (The jurors entered the courtroom.)

16 THE COURT: Okay. You can be seated.

17 Okay. Well, we've got a jury charge for  
18 you. So we put our work in and we worked late in  
19 the day yesterday, but we are done. The bad news is  
20 it is pretty long. So I'm sorry about that.

21 I have only got one Dr. Pepper. We'll  
22 hope we can get through it.

23 But I'll tell you -- so what we are doing  
24 in reading the charge, courts are really based on an  
25 oral tradition, right? Before we ever had paper to

1 write things down, we still had a system of justice.

2 And so it is my duty to keep carrying on  
3 this tradition and I'm going to read the charge to  
4 you. But I'm a visual learner. And so if you are  
5 like me, hearing things doesn't make them stick as  
6 much as seeing them.

7 So what I'm going to do is try to make a  
8 deal with you. I'm going to give you a copy of the  
9 jury charge so each one of you has a copy. You will  
10 also have an extra that when you select a  
11 foreperson, they will have the control copy that  
12 y'all will actually fill out.

13 I'm going to give you a copy, but I'm  
14 going to only do that if we can agree that you are  
15 going to read along with me and not get ahead of me,  
16 because there is so much to read ahead that you  
17 could just get lost. I want us to all stick  
18 together. Sound good?

19 Okay. Let's hand out the copies.

20 Volume 1 and 2. I'm joking. It's a lot  
21 of paper, I'm sorry. The trees are crying at me  
22 right now.

23 This is why we're excited to give y'all  
24 the case today.

25 Okay. So here we go.

1 Jury instructions.

2 Members of the jury, it's my duty and  
3 responsibility to instruct you on the law you are to  
4 apply in this case. The law contained in these  
5 instructions is the only law you may follow.

6 It is your duty to follow what I instruct  
7 you the law is, regardless of any opinion that you  
8 might have as to what the law ought to be.

9 If I have given you the impression during  
10 the trial that I favor either party, or any of the  
11 three parties, you must disregard that impression.

12 If I have given you the impression during  
13 the trial that I have an opinion about the facts of  
14 this case, you must disregard that impression. You  
15 are the sole judges of the facts of this case.

16 Other than my instructions to you on the  
17 law, you should disregard anything I may have said  
18 or done during the trial in arriving at your  
19 verdict.

20 You should consider all of the  
21 instructions about the law as a whole and regard  
22 each instruction in light of the others without  
23 isolating a particular statement or paragraph.

24 The testimony of the witnesses and other  
25 exhibits introduced by the parties constitute the



1 evidence. The statements of counsel are not  
2 evidence; they are only arguments.

3 It is important for you to distinguish  
4 between the arguments of counsel and the evidence on  
5 which those arguments rest.

6 What the lawyers say or do is not  
7 evidence. You may, however, consider their  
8 arguments in light of the evidence that has been  
9 admitted and determine whether the evidence admitted  
10 in this trial supports the arguments.

11 You must determine the facts from all the  
12 testimony that you have heard and the other evidence  
13 submitted. You are the judges of the facts, but in  
14 finding those facts, you must apply the law as I  
15 instruct you.

16 You are required by law to decide the case  
17 in a fair, impartial, and unbiased manner based  
18 entirely on the law and on the evidence presented to  
19 you in the courtroom.

20 You may not be influenced by passion,  
21 prejudice, or sympathy you might have for the  
22 plaintiff or either defendant in arriving at your  
23 verdict. Do not let bias, prejudice, or sympathy  
24 play any part in your deliberations.

25 A corporation and all other persons are

1 equal before the law and must be treated as equals  
2 in a court of justice.

3 Preponderance of the evidence.

4 Plaintiff Charlene Carter has the burden  
5 of proving her case by a preponderance of the  
6 evidence. To establish by a preponderance of the  
7 evidence means to prove something is more likely so  
8 than not so.

9 If you find that Plaintiff Charlene Carter  
10 has failed to prove any element of her claim by a  
11 preponderance of the evidence, then she may not  
12 recover on that claim.

13 Evidence.

14 The evidence you are to consider consists  
15 of the testimony of the witnesses, the documents,  
16 and other exhibits admitted into evidence and any  
17 fair inferences and reasonable conclusions you can  
18 draw from the facts and circumstances that have been  
19 proven.

20 Generally speaking, there are two types of  
21 evidence. One is direct, such as testimony of an  
22 eye witness. The other is indirect or  
23 circumstantial evidence.

24 Circumstantial evidence is evidence that  
25 proves a fact from which you can logically conclude

1 another fact exists.

2 As a general rule, the law makes no  
3 distinction between direct and circumstantial  
4 evidence, but simply requires that you find the  
5 facts from a preponderance of all of the evidence,  
6 both direct and circumstantial.

7 Stipulations.

8 A stipulation is an agreement. When there  
9 is no dispute about certain facts, the attorneys may  
10 agree or stipulate to those facts. You must accept  
11 a stipulated fact as evidence and treat that fact as  
12 having been proven here in court.

13 The parties stipulate to the below facts  
14 which are set forth in individually numbered  
15 paragraphs and which require no proof.

16 One, Charlene Carter is a Christian who  
17 believes that abortion is the taking of a human  
18 life, contrary to the teachings of the Bible and the  
19 will of God.

20 Two, Carter was hired as a flight  
21 attendant by Southwest in 1996.

22 Three, TWU Local 556 is the local union  
23 representing flight attendants working at Southwest  
24 Airlines.

25 Four, Local 556 served as Carter's

1 exclusive bargaining representative throughout her  
2 tenure with Southwest.

3 Five, for several years, Carter objected  
4 to certain decisions by and the leadership of Local  
5 556's leadership through email messages and Facebook  
6 postings.

7 Six, in September of 2013, Carter resigned  
8 her membership with Local 556 and was an agency  
9 fee-paying non-member objector until her termination  
10 in 2017.

11 Seven, starting in early 2015, Carter  
12 began sending messages to then president of Local  
13 556, Audrey Stone, discussing Carter's status as a  
14 union objector. These emails and messages continued  
15 through the termination of Carter's employment by  
16 Southwest.

17 Eight, from 2015 through 2017, Carter  
18 continued in various efforts opposing the Union and  
19 the Union's then president, Audrey Stone. Carter  
20 supported a recall campaign and posted and sent  
21 messages on social media expressing her disapproval  
22 of the Union and Union leadership. Carter sent many  
23 direct messages to Stone to which Stone never  
24 responded.

25 Nine, in January of 2017, members of Local

1 556, including President Stone, attended a  
2 Union-sponsored women's committee meeting in  
3 Washington DC.

4 Ten, on January 21, 2017, certain members  
5 of Local 556 attended the Women's March on  
6 Washington DC.

7 Eleven, on February 14, 2017, Carter sent  
8 Local 556 President Stone private messages via  
9 Facebook Messenger.

10 Twelve, President Stone never sent Carter  
11 responses to the private messages.

12 Thirteen, on February 22, 2017, President  
13 Stone reported Carter's emails and Facebook messages  
14 to Stone's base manager, Suzanne Stephenson, in Las  
15 Vegas, Nevada.

16 Fourteen, on March 7, 2017, Southwest held  
17 a fact-finding meeting with Carter as part of its  
18 investigation of President Stone's complaint.

19 Fifteen, on March 14, 2017, Southwest sent  
20 Carter a termination notice.

21 Witnesses.

22 You alone are to determine the questions  
23 of credibility or truthfulness of the witnesses.

24 In weighing the testimony of the  
25 witnesses, you may consider the witness's manner and

1 demeanor on the witness stand, any feelings or  
2 interest in the case, any prejudice or bias about  
3 the case that he or she may have, and the  
4 consistency or inconsistency of his or her  
5 testimony, considered in light of the circumstances.

6 Has the witness been contradicted by other  
7 credible evidence? Has he or she made statements at  
8 other times and places contrary to those made here  
9 on the witness stand?

10 You must give the testimony of each  
11 witness the credibility you think it deserves.

12 Even though a witness may be a party to  
13 the action, and therefore, interested in its  
14 outcome, the testimony may be accepted if it is not  
15 contradicted by direct evidence or by any inference  
16 that may be drawn from the evidence if you believe  
17 the testimony.

18 You are not to decide this case by  
19 counting the number of witnesses who have testified  
20 on the opposing sides. Witness testimony is  
21 weighed, witnesses are not counted. The test is not  
22 the relative number of witnesses, but the relative  
23 convincing force of the evidence.

24 The testimony of a single witness is  
25 sufficient to prove any fact even if a greater

1 number of witnesses testified to the contrary, if,  
2 after considering all of the evidence, you believe  
3 that witness.

4 Similar acts.

5 Evidence that an act was done at one time  
6 or on one occasion is not any evidence or proof  
7 whatsoever that the act was done in this case.

8 Then how may you consider evidence of  
9 similar acts?

10 You may consider evidence of similar acts  
11 for the limited purpose of showing Carter's,  
12 Southwest's, Local 556's motives, opportunities,  
13 intents, knowledges, plans, identities, or absence  
14 of mistakes or accidents which are at issue in this  
15 case.

16 Such evidence may not be considered for  
17 any other purpose whatsoever. You may not use the  
18 evidence to consider or reflect Carter's,  
19 Southwest's or Local 556's character.

20 Impeachment by witnesses' inconsistent  
21 statements.

22 In determining the weight to give to the  
23 testimony of a witness, consider whether there was  
24 evidence that at some other time the witness said or  
25 did something or failed to say or do something that

1 was different from the testimony given at trial.

2 A simple mistake by a witness does not  
3 necessarily mean that the witness did not tell the  
4 truth as he or she remembers it. People may forget  
5 some things or remember other things inaccurately.

6 If a witness made a misstatement, consider  
7 whether that misstatement was an intentional  
8 falsehood or simply an innocent mistake. The  
9 significance of that may depend on whether it has to  
10 do with an important fact or with only an  
11 unimportant detail.

12 Deposition testimony.

13 Certain testimony has been presented to  
14 you through a deposition. A deposition is the sworn  
15 recorded answers to questions a witness was asked in  
16 advance of the trial.

17 Under some circumstances, if a witness  
18 cannot be present to testify from the witness stand,  
19 that witness's testimony may be presented under oath  
20 in the form of a deposition.

21 Some time before the testimony was  
22 presented here, attorneys representing the parties  
23 in this case questioned the witness under oath. A  
24 court reporter was present and recorded the  
25 testimony. The questions and answers have been



1 shown to you.

2 This deposition testimony is entitled to  
3 the same consideration and is to be judged by you as  
4 to credibility and weighed and otherwise considered  
5 by you in the same way as if the witness had been  
6 present and had testified from the witness stand in  
7 court.

8 Limiting instructions.

9 When testimony or an exhibit is admitted  
10 for a limited purpose, you may consider that  
11 testimony or exhibit only for the specific limited  
12 purpose for which it was admitted.

13 Remember the limiting instruction that I  
14 told you throughout this case. How and whether  
15 Defendant Southwest treated or disciplined other  
16 employees is irrelevant to Plaintiff Carter's claims  
17 in this case. To the extent you have heard  
18 testimony or evidence about that topic, you should  
19 disregard it.

20 No inference from filing suit.

21 The fact that a person brought a lawsuit  
22 and is in court seeking damages creates no inference  
23 that the person is entitled to a judgment. Anyone  
24 may make a claim and file a lawsuit. The act of  
25 making a claim in a lawsuit, by itself, does not in

1 any way tend to establish that claim and is not  
2 evidence.

3 Parties' claims.

4 I will now instruct you on the law that  
5 you must apply to Plaintiff Carter's claims.

6 A, Plaintiff Carter's duty of fair  
7 representation claim against Defendant Local 556.

8 A federal law called the Railway Labor Act  
9 imposes upon unions like Defendant Local 556 what is  
10 a called a duty of fair representation.

11 The duty means that a union must serve the  
12 interest of all employees, whether they are union  
13 members or not, without hostility or discrimination  
14 toward any, must exercise its discretion with  
15 complete good faith and honesty, and must avoid  
16 arbitrary conduct.

17 This is especially true when a union is  
18 handling a grievance based upon a termination. The  
19 industrial equivalent of capital punishment.

20 Plaintiff Charlene Carter claims that  
21 Defendant Local 556 violated its duty of fair  
22 representation owed to her under the Railway Labor  
23 Act when former Local 556 president Audrey Stone  
24 reported Plaintiff Carter to Defendant Southwest.

25 A union is liable for all acts of its

1 officers and agents within the scope of their  
2 official capacity, regardless of whether the union  
3 specifically authorized or ratified the acts.

4 Holding elected union office is persuasive  
5 and substantial evidence that the union is acting in  
6 his or her official capacity -- union official is  
7 acting in his or her official capacity and is  
8 decisive in the absence of compelling contrary  
9 evidence.

10 The union violates the duty of fair  
11 representation when it takes action that is  
12 arbitrary, discriminatory, or in bad faith.

13 Arbitrary means depending on individual  
14 discretion, or of relating to, or involving a  
15 determination made without consideration or regard  
16 for facts, circumstances, fixed rules, or  
17 procedures.

18 Bad faith means dishonesty of belief,  
19 purpose, or motive.

20 Discriminatory means differential  
21 treatment or a failure to treat all persons equally  
22 when no reasonable distinction can be found between  
23 those favored and those not favored.

24 To prove that Defendant Local 556 violated  
25 its duty of fair representation that it owed to

1 Plaintiff Carter, Plaintiff Carter must prove by a  
2 preponderance of the evidence that Defendant Local  
3 556 acted arbitrarily, discriminatorily, or in bad  
4 faith.

5 Plaintiff Carter can also prove a breach  
6 of duty by the Union by showing that the Union was  
7 arbitrarily ignoring a meritorious grievance or  
8 processing it in a perfunctory fashion.

9 The law presumes a union breaches its duty  
10 when it causes the discharge of an employee. If a  
11 union caused the discharge of an employee, it can  
12 rebut the presumption of breach by showing by a  
13 preponderance of the evidence that the action was  
14 done in good faith, was based on rational  
15 considerations, and was linked in some way to the  
16 union's need to effectively represent its  
17 constituency as a whole.

18 If you find that President Stone was  
19 acting in her official capacity when she reported  
20 Plaintiff Carter to Defendant Southwest, and that  
21 Local 556, through Stone, caused Plaintiff Carter's  
22 discharge, then you must presume that Local 556  
23 breached the duty of representation. Then you must  
24 consider whether Local 556 can rebut the presumption  
25 by a preponderance of the evidence.

1           If you find that Stone was acting in her  
2 official capacity when she reported Plaintiff Carter  
3 to Defendant Southwest, but that Local 556 did not  
4 cause Plaintiff Carter's discharge, then there is no  
5 presumption of breach.

6           Nevertheless, you must still determine  
7 whether Local 556 breached its duty by acting  
8 arbitrarily, discriminatorily, or in bad faith even  
9 if it did not cause Plaintiff Carter's discharge.

10           If you determine that Defendant Local 556  
11 rebuts a presumption that it violated its duty of  
12 fair representation, you must still nevertheless  
13 determine whether Local 556 breached its duty by  
14 acting arbitrarily, discriminatorily, or in bad  
15 faith, even if it rebuts a presumption that it  
16 breached a duty -- breached the duty.

17           B, Plaintiff Carter's Railway Labor Act  
18 retaliation claim against Defendants Southwest and  
19 Local 556.

20           Plaintiff Carter brings a claim against  
21 Defendants Southwest and Local 556 through a federal  
22 law commonly referred to as the Railway Labor Act.

23           The act forbids any limitation upon  
24 freedom of association among employees and provides  
25 for the complete independence of employees in the

1 matter of self organization.

2 The act also places certain general duties  
3 upon common air carriers and their unions such as  
4 Defendants Southwest and Local 556, respectively.

5 Plaintiff Carter has filed this lawsuit  
6 based on her claim that Defendants Southwest and  
7 Local 556 violated two provisions of this act.

8 The first provision that Plaintiff Carter  
9 alleges that Defendants Southwest and Local 556  
10 violated is Section 152 Third.

11 It states, "Representatives of a union  
12 shall be designated by their respective parties  
13 without interference, influence, or coercion by  
14 either party over the designation of representatives  
15 by the other; and neither party shall in any way  
16 interfere with, influence, or coerce the other in  
17 its choice of representatives.

18 "Representatives of employees for the  
19 purposes of this chapter need not be persons in the  
20 employ of the carrier, and no carrier shall, by  
21 interference, influence, or coercion seek in any  
22 manner to prevent the designation by its employees  
23 as their representatives to or which are not  
24 employees of the carrier."

25 The second provision that Plaintiff Carter

1 alleges that Defendant Southwest and Local 556  
2 violated is Section 152 Fourth.

3 It states in pertinent part, "Employees  
4 shall have the right to organize and bargain  
5 collectively through union representatives of their  
6 choosing. The majority of any craft or class of  
7 employees shall have the right to determine who  
8 shall be the representative of the craft or class  
9 for the purposes of this chapter.

10 "No carrier, its officers, or agents shall  
11 deny or in any way question the right of its  
12 employees to join, organize, or assist in organizing  
13 the labor organization of their choice; and it shall  
14 be unlawful for any carrier to interfere in any way  
15 with the organization of its employees, or to use  
16 the funds of the carrier in maintaining or assisting  
17 or contributing to any labor organization, labor  
18 representative, or other agency of collective  
19 bargaining, or in performing any work therefor, or  
20 to influence or coerce employees in an effort to  
21 induce them to join or remain or not to join or  
22 remain members of any labor organization, or to  
23 deduct wages -- or to deduct from the wages of  
24 employees any dues, fees, assessments, or other  
25 contributions payable to labor organizations, or to

1 collect or to assist in the collection of any such  
2 dues, fees, assessments, or other contributions."

3 Plaintiff Carter claims that Defendant  
4 Southwest retaliated against her by firing her for  
5 engaging in union opposition and organizational  
6 activity protected by Section 152 Third and Fourth.

7 Plaintiff Carter also claims that  
8 Defendant Local 556 retaliated against her by  
9 attempting to discipline her for engaging in union  
10 opposition and organizational activity protected by  
11 Section 152 Third and Fourth.

12 It is unlawful for a carrier employer or a  
13 union to retaliate against an employee for  
14 exercising rights protected by the act.

15 To prove that Defendant Southwest  
16 retaliated against Plaintiff Carter, Plaintiff  
17 Carter must prove by a preponderance of the evidence  
18 the following elements:

19 One, that Plaintiff Carter engaged in  
20 activity that is protected by Section 152 Third  
21 and/or Fourth;

22 Two, that Defendant Southwest discharged  
23 Plaintiff Carter;

24 And three, that Plaintiff Carter's  
25 protected activity was a substantial or motivating



1 factor in Defendant Southwest's decision to  
2 discharge Plaintiff Carter.

3 To prove that Defendant Local 556  
4 retaliated against Plaintiff Carter, Plaintiff  
5 Carter must prove by a preponderance of the evidence  
6 the following elements:

7 One, that Plaintiff Carter engaged in  
8 activity that is protected by Section 152 Third  
9 and/or Fourth;

10 Two, that former Local 556 president  
11 Audrey Stone reported Plaintiff Carter to Defendant  
12 Southwest for discipline;

13 Three, that Stone reported Plaintiff  
14 Carter in Stone's official capacity as president of  
15 Local 556;

16 And four, that Plaintiff Carter's  
17 protected activity was a substantial or a motivating  
18 factor in Stone's decision to report Plaintiff  
19 Carter to Defendant Southwest for discipline.

20 All union oppositional and organizational  
21 activity is protected under Section 152 Third and  
22 Fourth unless it:

23 One, constitutes a threat of violence;

24 Or, two, is a false statement made with  
25 knowledge of its falsity or with reckless disregard

1 for the truth.

2 Activity that is intemperate, abusive,  
3 insulting, or hyperbolic is protected activity under  
4 Section 152 Third and Fourth. Activity that  
5 expresses and opinion about someone's competence for  
6 her job is also protected.

7 If you decide that Defendant Southwest  
8 and/or Defendant Local 556 retaliated against  
9 Plaintiff Carter in violation of the Railway Labor  
10 Act, you must then consider each defendant's  
11 affirmative defense.

12 Defendant Southwest asserts that Plaintiff  
13 Carter would have been discharged even if she had  
14 not engaged in activity protected by Section 152  
15 Third and/or Fourth.

16 Defendant Local 556 asserts that then  
17 President Stone would have reported Plaintiff Carter  
18 to Defendant Southwest even if Plaintiff Carter had  
19 not engaged in activity protected by Section 152  
20 Third and/or Fourth.

21 Each defendant has to separately prove its  
22 affirmative defense and must prove it by a  
23 preponderance of the evidence.

24 If a defendant proves its affirmative  
25 defense by a preponderance of the evidence, then

1 that defendant is not liable for this claim.

2 C, Plaintiff Carter's Title VII religious  
3 discrimination claims against Defendants Southwest  
4 and Local 556.

5 Subpart 1. Plaintiff Carter's unlawful  
6 discharge claim against Defendants Southwest and  
7 Local 556.

8 Plaintiff Charlene Carter claims that  
9 Defendant Southwest discharged her because of her  
10 sincerely held religious observances, beliefs, or  
11 practices.

12 Employer Defendant Southwest denies  
13 Plaintiff Carter's claims and contends that it  
14 discharged her because she violated Defendant  
15 Southwest's employment policies.

16 It is unlawful for an employer to  
17 discriminate against an employee because of the  
18 employee's sincerely held religious observances,  
19 beliefs, or practices. An employer may, however,  
20 discharge an employee for other reasons, good or  
21 bad, fair or unfair.

22 To prove unlawful discrimination by  
23 Defendant Southwest, Plaintiff Carter must prove by  
24 a preponderance of the evidence:

25 One, that Defendant Southwest discharged

1 Carter;

2 And two, that Defendant Southwest's  
3 discharge of Plaintiff Carter was motivated by her  
4 sincerely held religious observances, beliefs, or  
5 practices.

6 Plaintiff Carter does not have to prove  
7 that unlawful discrimination was the only reason  
8 Defendant Southwest discharged her.

9 If you find that the reason Defendant  
10 Southwest has given for discharging Plaintiff Carter  
11 is unworthy of belief, you may, but are not required  
12 to, infer that Defendant Southwest was motivated by  
13 Plaintiff Carter's religious observances, beliefs,  
14 or practices.

15 Plaintiff Carter claims that Defendant  
16 Local 556 caused and/or attempted to cause Defendant  
17 Southwest to discriminate against Plaintiff Carter  
18 because of her sincerely held religious observances,  
19 beliefs or practices by reporting Carter's religious  
20 observances, beliefs, or practices for discipline.

21 Local 556 denies Plaintiff Carter's claims  
22 and contends that it had no authority to terminate  
23 Plaintiff Carter.

24 It is unlawful for a union to cause or  
25 attempt to cause an employer to discriminate against

1 an employee because of the employee's sincerely held  
2 religious beliefs, observances, or practices.

3 To prove unlawful discrimination by  
4 Defendant Local 556, Plaintiff Carter must prove by  
5 a preponderance of the evidence:

6 One, that former Local 556 president  
7 Audrey Stone was acting in her official Local 556  
8 capacity when she reported Carter for discipline to  
9 Defendant Southwest;

10 Two, that Local 556 caused or attempted to  
11 cause discrimination against Plaintiff Carter by  
12 Defendant Southwest;

13 And, three, that Local 556's decision to  
14 report Carter to Southwest was motivated by Carter's  
15 sincerely held religious observances, beliefs, or  
16 practices.

17 Plaintiff Carter does not have to prove  
18 that unlawful discrimination was the only reason  
19 Defendant Local 556 reported her to Defendant  
20 Southwest.

21 If you find that the reason Defendant  
22 Local 556 has given for reporting Plaintiff Carter  
23 to Defendant Southwest is unworthy of belief, you  
24 may, but are not required to, infer that Defendant  
25 Local 556 was motivated by Plaintiff Carter's

1 religious observances, beliefs, or practices.

2 Subpart two. Plaintiff Carter's religious  
3 discrimination claim against Defendant Local 556.

4 Plaintiff Carter claims that Defendant  
5 Local 556 discriminated against Plaintiff Carter  
6 because of her sincerely held religious observances,  
7 practices or beliefs.

8 The Union, Local 556, denies that Audrey  
9 Stone was acting in her official capacity when she  
10 reported Plaintiff Carter to Defendant Southwest, or  
11 that her reporting was motivated by Plaintiff  
12 Carter's religious observances, practices, or  
13 beliefs.

14 It is unlawful for a union to discriminate  
15 against an employee because of her sincerely held  
16 religious observances, practices, or beliefs.

17 To prove unlawful discrimination by  
18 Defendant Local 556, Plaintiff Carter must prove by  
19 a preponderance of the evidence:

20 One, that Defendant Local 556 treated  
21 Plaintiff Carter less favorably than other  
22 employees;

23 And two, that such treatment was motivated  
24 by Plaintiff Carter's sincerely held religious  
25 beliefs, observances, or practices.

1 Subpart 3. Plaintiff Carter's failure to  
2 accommodate claim against Defendant Southwest.

3 Plaintiff Carter claims that Defendant  
4 Southwest failed to accommodate Plaintiff Carter's  
5 sincerely held religious beliefs, observances, or  
6 practices.

7 Defendant Southwest denies the claim and  
8 claims that it had no obligation to accommodate  
9 Plaintiff Carter, did not know or have reason to  
10 suspect that Plaintiff Carter needed an  
11 accommodation, and that Plaintiff Carter's religious  
12 belief did not conflict with a requirement of her  
13 employment.

14 It is unlawful for an employer to refuse  
15 to accommodate any aspect of an employee's religious  
16 observances, practices, or beliefs.

17 An accommodation means allowing the  
18 employee to engage in a religious practice or  
19 observance despite the employer's normal rules to  
20 the contrary.

21 Discharging an employee because of her  
22 religious observances, practices, or beliefs is  
23 synonymous with refusing to accommodate the  
24 employee's religious observances, practices, or  
25 beliefs.

1 To prove that Defendant Southwest  
2 unlawfully failed to accommodate her sincerely held  
3 religious beliefs, practices, or observances,  
4 Plaintiff Carter must prove by a preponderance of  
5 the evidence:

6 One, that Plaintiff Carter's sincerely  
7 held religious beliefs, observances, or practices  
8 conflicted with a job requirement;

9 Two, that Plaintiff Carter was discharged  
10 for failure to comply with a conflicting job  
11 requirement;

12 And three, that Defendant Southwest  
13 discharged Carter with a motive of avoiding the need  
14 for accommodating a religious belief, observance, or  
15 practice.

16 If you find that Plaintiff Carter has  
17 established each of these elements, then to avoid  
18 liability, Defendant Southwest must establish by a  
19 preponderance of the evidence that it did not  
20 accommodate Plaintiff Carter because any  
21 accommodation would have imposed an undue hardship  
22 on Defendant Southwest.

23 Undue hardship cannot be proven by merely  
24 proving any cost or any disruption or inconvenience  
25 to the business. A greater degree of hardship is



1 required to be shown.

2 An undue hardship means more than a  
3 de minimus cost on the conduct of the employer's  
4 business either in terms of financial costs or  
5 disruption of the business.

6 Subpart 4. Plaintiff's failure to  
7 accommodate claim against Defendant Local 556.

8 Plaintiff Carter claims that Defendant  
9 Local 556 failed to accommodate her sincerely held  
10 religious observances, beliefs, or practices by  
11 reporting Plaintiff Carter to Defendant Southwest  
12 instead of accommodating them.

13 The Union, Local 556, denies the claim and  
14 claims that Plaintiff Carter never sought a  
15 religious accommodation from Defendant Local 556,  
16 and that Defendant Local 556 did not exercise  
17 control over the terms and conditions of Plaintiff  
18 Carter's employment.

19 It is unlawful for a union to fail to  
20 accommodate any aspect of an employee's sincerely  
21 held religious observances, beliefs, or practices.

22 An accommodation means allowing the  
23 employee to engage in her religious practice or  
24 observance despite the Union's normal rules to the  
25 contrary.

1           It is unlawful for a union to cause or  
2 attempt to cause an employer to discriminate against  
3 an employee because of the employee's sincerely held  
4 religious beliefs, observances, or practices.

5           To prove that Defendant Local 556  
6 unlawfully failed to accommodate her sincerely held  
7 religious beliefs, practices, or observances,  
8 Plaintiff Carter must prove by a preponderance of  
9 the evidence that former Local 556 president Audrey  
10 Stone was acting in her official capacity when she  
11 reported Plaintiff Carter to Defendant Southwest;

12           Two, that Defendant Local 556 caused or  
13 attempted to cause Plaintiff Carter's discharge by  
14 Defendant Southwest;

15           And three, that Defendant Local 556 caused  
16 or attempted to cause Plaintiff Carter's discharge  
17 with a motive of avoiding the need for accommodating  
18 a religious belief, observance, or practice.

19           Damages.

20           If you find that Defendants Southwest  
21 and/or Local 556 violated the Railway Labor Act,  
22 then you must determine whether either or both  
23 defendants caused Plaintiff Carter damages.

24           If so, you must determine the amount of  
25 those damages attributable to the liable party.

1                   You should not conclude from the fact that  
2 I'm instructing you on damages that I may have an  
3 opinion as whether Plaintiff Carter has proved  
4 liability.

5                   Plaintiff Carter must prove her damages by  
6 a preponderance of the evidence. Your award must be  
7 based on evidence and not on speculation or  
8 guesswork.

9                   On the other hand, Plaintiff Carter need  
10 not prove the amount of her losses with mathematical  
11 precision, but only with as much definitiveness and  
12 accuracy as the circumstances permit.

13                  You should consider the following elements  
14 of actual damages and no others.

15                  One, the amount of back pay and benefits  
16 Plaintiff Carter would have earned in her employment  
17 with Defendant Southwest if she had not been  
18 terminated from her employment with Southwest from  
19 March 14th, 2017, to the date of your verdict, minus  
20 the amount of earnings and benefits that Plaintiff  
21 Carter received from employment during that time.

22                  Two, the amount of other damages sustained  
23 by Plaintiff Carter, such as emotional distress,  
24 pain and suffering, inconvenience, mental anguish,  
25 and loss of enjoyment of life.

1                   However, you may not consider awarding  
2   Plaintiff Carter emotional distress or pain and  
3   suffering losses in relation to neither her Railway  
4   Labor Act retaliation claim against Defendant  
5   Southwest and Local 556, nor her duty of fair  
6   representation claim against Defendant Local 556.

7                   Actual damages.

8                   There is no exact standard for determining  
9   actual damages. You are to determine an amount that  
10   will fairly compensate Plaintiff Carter for the harm  
11   she has sustained. Do not include as actual damages  
12   interest on wages or benefits.

13                  Back pay.

14                  Back pay includes the amounts in the  
15   evidence Plaintiff Carter would have earned had she  
16   remained an employee of Defendant Southwest.

17                  These amounts include wages or salary, and  
18   such benefits as health insurance, seniority  
19   benefits, 401(k) and other retirement benefits,  
20   vacation pay, ratification bonuses, profit sharing,  
21   tax relief shared with employees.

22                  You must subtract the amounts of earnings  
23   and benefits that Southwest proves by a  
24   preponderance of the evidence Plaintiff Carter  
25   received during the period in question.

1 Punitive damages.

2 In addition to actual damages, you may  
3 consider whether to award punitive damages with  
4 respect to Plaintiff Carter's Title VII claims.

5 Punitive damages are damages designed to  
6 punish a defendant and to deter similar conduct in  
7 the future.

8 You may not consider awarding Plaintiff  
9 Carter punitive damages against Defendant Southwest  
10 or Local 556 in relation to her claim of retaliation  
11 under the Railway Labor Act.

12 You may not consider awarding Plaintiff  
13 Carter punitive damages against Local 556 in  
14 relation to her claim of violation of the duty of  
15 fair representation under the Railway Labor Act.

16 You may award punitive damages if  
17 Plaintiff Carter proves by a preponderance of the  
18 evidence that:

19 One, the individual who engaged in the  
20 discriminatory act or practice was acting in a  
21 managerial capacity;

22 Two, he or she engaged in the  
23 discriminatory act or practice while acting in the  
24 scope of his or her employment;

25 Three, he or she acted with malice or

1 reckless indifference to Plaintiff Carter's  
2 federally protected right to be free from  
3 discrimination.

4 If Plaintiff Carter has proved these  
5 facts, then you may award punitive damages, unless  
6 Defendant Southwest or Local 556 proves by a  
7 preponderance of the evidence that the act was  
8 contrary to its good faith efforts to prevent  
9 discrimination in the workplace.

10 In determining whether the decision-maker  
11 for Southwest or Local 556 was a supervisor or  
12 manager for Defendant Southwest or Local 556, you  
13 should consider the type of authority that person  
14 had over Plaintiff Carter and the type of authority  
15 for employment decisions Defendants Southwest or  
16 Local 556 authorized that decision-maker to make.

17 An action is in reckless indifference to  
18 Plaintiff Carter's federally protected rights if it  
19 was taken in the face of a perceived risk that the  
20 conduct would violate federal law.

21 Plaintiff Carter is not required to show  
22 egregious or outrageous discrimination to recover  
23 punitive damages.

24 Proof that Defendant Southwest or Local  
25 556 engaged in intentional discrimination, however,

1 is not enough in itself to justify an award of  
2 punitive damages.

3 In determining whether Defendant Southwest  
4 or Local 556 made good faith efforts to prevent  
5 discrimination in the workplace, you may consider  
6 whether Defendants adopted anti-discrimination  
7 policies, whether they educated their employees on  
8 the federal anti-discrimination laws, how or whether  
9 they responded to Plaintiff Carter's complaint of  
10 discrimination.

11 With respect to Defendant Local 556, you  
12 may consider how Local 556 responded to other  
13 complaints of discrimination.

14 If you find that Defendants Southwest or  
15 Local 556 acted with malice or reckless indifference  
16 to Plaintiff Carter's rights and did not make a good  
17 faith effort to comply with the law, then in  
18 addition to any other damages you may find Plaintiff  
19 Carter is entitled to receive, you may, but are not  
20 required to, award Plaintiff Carter any amount as  
21 punitive damages for the purposes of punishing  
22 Defendants Southwest and Local 556 for engaging in  
23 such wrongful conduct in deterring Defendant  
24 Southwest or Local 556 and others from engaging in  
25 such conduct in the future.

1           You should presume that Plaintiff Carter  
2 has been made whole for her injuries by any actual  
3 damages you have awarded.

4           If you decide to award punitive damages,  
5 you should consider the following in deciding the  
6 amount:

7           One, how reprehensible Defendant  
8 Southwest's or Local 556's conduct was;

9           You may consider whether the harm  
10 Plaintiff Carter suffered was physical or economic  
11 or both;

12           Whether there was violence, intentional  
13 malice, or reckless disregard for human health or  
14 safety;

15           Whether Defendant Southwest and/or Local  
16 556's conduct that harmed Plaintiff Carter also  
17 posed a risk of harm to others;

18           Whether there was any repetition of the  
19 wrongful conduct where there was a past conduct of  
20 the same sort that harmed Plaintiff Carter.

21           Two, how much harm Defendants Southwest  
22 and/or Local 556's wrongful conduct caused Plaintiff  
23 Carter.

24           Three, what amount of punitive damages in  
25 addition to the other damages already awarded is



1 needed, considering Defendant Southwest's and/or  
2 Local 556's financial condition, to punish Defendant  
3 Southwest and/or Local 556 for its conduct toward  
4 Plaintiff Carter and to deter Defendant Southwest  
5 and/or Local 556 and others from similar wrongful  
6 conduct in the future.

7 The amount of any punitive damages awarded  
8 should bear a reasonable relationship to the harm  
9 caused Plaintiff Carter.

10 You may assess punitive damages against  
11 any or all of the defendants, or you may refuse to  
12 impose punitive damages.

13 If punitive damages are imposed on more  
14 than one defendant, the amount for each may be the  
15 same or they may be different.

16 Front pay.

17 An award of future damages necessarily  
18 requires that payment be made now for a loss that  
19 the plaintiff will not actually suffer until some  
20 future date.

21 If you should find that Plaintiff Carter  
22 is entitled to future earnings, then you must  
23 determine the present worth in dollars of such  
24 earnings.

25 You must consider two particular factors.

1           One, you should reduce any award by the  
2 amount of the expenses that the plaintiff should  
3 have incurred in making those earnings.

4           Two, you should reduce any award to the  
5 present value by considering the interest that the  
6 plaintiff could earn on the amount of the award if  
7 she had made a relatively risk-free investment.

8           The reason why you must make this  
9 reduction is because an award of an amount  
10 representing future loss of earnings is more  
11 valuable to the plaintiff if she receives it today  
12 than if she received it the future when she would  
13 otherwise have earned it.

14           It is more valuable because the plaintiff  
15 can earn interest on it for the period of time  
16 between the date of the award and the date she would  
17 have earned the money. Thus, you should adjust the  
18 amount of any award for future loss of earnings by  
19 the amount of interest that the plaintiff can earn  
20 on that amount in the future.

21           Any award you may make to Plaintiff Carter  
22 is not subject to income tax. Neither the state nor  
23 the federal government will take it. Therefore, you  
24 should determine the amount that Plaintiff Carter is  
25 entitled to receive without considering the effect

1 of taxes upon it.

2 Any determination that you make with  
3 respect to this topic, front pay, will not be  
4 binding upon me. Instead, you are acting in an  
5 advisory capacity.

6 Nominal damages.

7 Nominal damages are an inconsequential or  
8 trifling sum awarded to a plaintiff when a technical  
9 violation of her rights has occurred but the  
10 plaintiff has suffered no actual loss or injury.

11 If you find from a preponderance of the  
12 evidence that Plaintiff Carter sustained a technical  
13 violation of the Railway Labor Act, Title VII, or  
14 the duty of fair representation, but Plaintiff  
15 Carter has suffered no damages as a result of these  
16 violations, you may award Plaintiff Carter nominal  
17 damages.

18 Mitigation.

19 Defendant Southwest and Local 556 claim  
20 that Plaintiff Carter failed to mitigate her  
21 damages. Plaintiff Carter has a duty under the law  
22 to mitigate her damages, that is, to exercise  
23 reasonable diligence under the circumstances to  
24 minimize her damages.

25 To succeed on this defense against

1 damages, Defendant Southwest and Local 556 must  
2 prove by a preponderance of the evidence:

3 One, that there is a -- that there was  
4 substantially equivalent employment available;

5 Two, Plaintiff Carter failed to use  
6 reasonable diligence in seeking those positions;

7 And three, the amount by which Plaintiff  
8 Carter's damages were increased by her failure to  
9 take such reasonable actions.

10 Substantially equivalent employment in  
11 this context means a job that has virtually  
12 identical promotional opportunities, compensation,  
13 job responsibilities, working conditions, and status  
14 as the job Carter lost.

15 Plaintiff does not have to accept a job  
16 that is dissimilar to the one she lost, one that  
17 would be a demotion, or one that would be demeaning.

18 The reasonableness of Plaintiff Carter's  
19 diligence should be evaluated in light of her  
20 individual characteristics and the job market.

21 Duty to deliberate. Notes.

22 It is now your duty to deliberate and to  
23 consult with one another in an effort to reach a  
24 verdict. Each of you must decide the case for  
25 yourself, but only after an impartial consideration

1 of the evidence with your fellow jurors.

2 During your deliberations, do not hesitate  
3 to re-examine your own opinions and change your mind  
4 if you are convinced that you are wrong, but do not  
5 give up on your honest beliefs because the other  
6 jurors think differently or just to finish the case.

7 Remember, at all times, you are the judges  
8 of the facts.

9 You have been allowed to take notes during  
10 this trial. Any notes that you took during this  
11 trial are only aids to your memory. If your memory  
12 differs from your notes, you should rely on your  
13 memory and not on your notes. The notes are not  
14 evidence.

15 If you did not take notes, rely on your  
16 independent recollection of the evidence. Do not be  
17 unduly influenced by the notes of other jurors.

18 Notes are not entitled to greater weight  
19 than the recollection or impression of each juror  
20 about the testimony.

21 When you go into the jury room to  
22 deliberate, you may take with you a copy of this  
23 charge, the exhibits that I have admitted into  
24 evidence, and your notes.

25 You must select a jury foreperson to guide

1 you in your deliberations and to speak for you here  
2 in the courtroom.

3 Your verdict must be unanimous. After you  
4 have reached a unanimous verdict, your jury  
5 foreperson must fill out the answers to the written  
6 questions on the verdict form and sign and date it.

7 After you have concluded your service and  
8 I have discharged the jury, you are not required to  
9 talk with anyone about the case.

10 If you need to communicate with me during  
11 your deliberations, the jury foreperson should write  
12 the inquiry and give it to the court security  
13 officer. After consulting with the attorneys, I  
14 will respond either in writing or by meeting with  
15 you in the courtroom.

16 Keep in mind, however, that you must never  
17 disclose to anyone, not even to me, your numerical  
18 division on any question on the verdict form.

19 Okay. This says "You may now proceed to  
20 deliberations," but the order I'm going in is I'm  
21 going to read the verdict form for you, we will take  
22 a break, and then we will do closing arguments. You  
23 are not deliberating just yet.

24 Okay. Jury questions. This is page 28.

25 One, questions about liability.

1 A, Local 556, liability questions.

2 Question 1. Has Plaintiff Carter proved  
3 that Audrey Stone was acting in her official  
4 capacity as then president of Local 556 when she  
5 reported Plaintiff Carter to Defendant Southwest?

6 Answer yes or no.

7 Question 2. Has Plaintiff Carter proved  
8 that Defendant Local 556 violated the duty of fair  
9 representation owed to Plaintiff Carter?

10 Question 3. Has Plaintiff Carter proved  
11 that Defendant Local 556 retaliated against  
12 Plaintiff Carter for engaging in any activity  
13 protected by the Railway Labor Act?

14 Answer yes or no.

15 If you answered yes to Question 3, then  
16 answer Question 4. If you have answered no to  
17 Question 3, skip to Question 5.

18 Question 4. Do you find that Defendant  
19 Local 556 has proved that Local 556 would have  
20 reported Plaintiff Carter to Defendant Southwest  
21 even if Plaintiff Carter had not engaged in activity  
22 protected by the Railway Labor Act?

23 Answer yes or no.

24 Question 5. Has Plaintiff Carter proved  
25 that Defendant Local 556 unlawfully discriminated

1 against Plaintiff Carter by causing or attempting to  
2 cause her discharge, and that such cause or attempt  
3 was motivated by Plaintiff Carter's sincerely held  
4 religious observances, beliefs, or practices?

5 Answer yes or no.

6 Question 6. Has Plaintiff Carter proved  
7 that Defendant Local 556 unlawfully discriminated  
8 against Plaintiff Carter by treating her less  
9 favorably than other employees, and that such  
10 treatment was motivated by Plaintiff Carter's  
11 sincerely held religious, observances, beliefs, or  
12 practices.

13 Answer yes or no.

14 If you answered yes to Question 1, then  
15 answer Question 7. If you answered no to  
16 Question 1, skip to Question 8.

17 Question 7. Has Plaintiff Carter proved  
18 that Defendant Local 556 unlawfully failed to  
19 accommodate Plaintiff Carter's sincerely held  
20 religious beliefs, practices, or observances?

21 Answer yes or no.

22 Part B. Southwest liability questions.

23 Question 8. Has Plaintiff Carter proved  
24 that Defendant Southwest retaliated against  
25 Plaintiff Carter for engaging in activity protected



1 by the Railway Labor Act?

2 Answer yes or no.

3 If you answered yes to Question 8, then  
4 answer Question 9. If you answered no to  
5 Question 8, skip to Question 10.

6 Question 9. Do you find that Defendant  
7 Southwest has proved that Southwest would have  
8 discharged Plaintiff Carter even if she had not  
9 engaged in activity protected by the Railway Labor  
10 Act?

11 Answer yes or no.

12 Question 10. Has Plaintiff Carter proved  
13 that Defendant Southwest unlawfully discriminated  
14 against Plaintiff Carter by discharging her, and  
15 that such discharge was motivated by Plaintiff  
16 Carter's sincerely held religious observances,  
17 beliefs, or practices?

18 Answer yes or no.

19 Question 11. Has Plaintiff Carter proved  
20 that Defendant Southwest failed to accommodate  
21 Plaintiff Carter's sincerely held religious beliefs,  
22 practices, or observances?

23 Answer yes or no.

24 I'm going to tell you an aside right  
25 quick.

1           There are those words "religious beliefs,  
2 practices, or observances." I put them in a  
3 different order, those three words, "beliefs,  
4 practices, observances," in Question 11 than  
5 Question 10. I probably did that throughout the  
6 charge.

7           They mean the same thing in any place no  
8 matter what the order of those three words is. So  
9 sorry for any confusion I may have caused. I just  
10 want to clear that up. Those three words mean the  
11 same thing every time no matter what order they are  
12 in.

13           Okay. If you answered yes to Question 11,  
14 then answer Question 12. If you answered no to  
15 Question 11, skip to Question 13.

16           Question 12. Do you find that Defendant  
17 Southwest has proved that any and all accommodations  
18 in this case would have been imposed -- would have  
19 imposed an undue hardship on Defendant Southwest?

20           Answer yes or no.

21           Part two. Questions on damages.

22           The jury should award whatever recoverable  
23 damages it finds that Plaintiff Carter proved each  
24 defendant caused. Should the jury award damages  
25 against both defendants, the Court will ensure that

1 it avoids giving Plaintiff Carter more than a full  
2 recovery of the damages the jury finds that she  
3 proved.

4 Part A. Local 556 damages questions.

5 If you answered yes to Question 2, then  
6 answer Question 13. If you answered yes to  
7 Question 3 and no to Question 4, then answer  
8 Question 13. If you answered yes to Question 5,  
9 then answer Question 13. If you answered yes to  
10 Question 6, then answer Question 13. If you  
11 answered yes to Question 7, then answer Question 13.

12 Otherwise, skip to Question 14.

13 Question 13. Lost wages, damages against  
14 Local 556.

15 What sum of money, if paid now in cash,  
16 would fairly and reasonably compensate Plaintiff  
17 Carter for lost wages and benefits, if any,  
18 Defendant Local 556 caused Plaintiff Carter?

19 Answer in dollars and cents for the  
20 following items and none other:

21 One, lost wages sustained between  
22 March 14, 2017, and the date of the jury's decision.

23 Answer.

24 Two, lost benefits sustained between  
25 March 14, 2017, and the date of the jury's decision.

1 Answer in dollars and cents.

2 If you answered yes to Question 5, then  
3 answer Question 14. If you answered yes to Question  
4 6, then answer Question 14. If you answered yes to  
5 Question 7, then answer Question 14.

6 Otherwise, skip to Question 15.

7 Question 14. Non-economic damages against  
8 Local 556 for Title VII claims.

9 What sum of money, if paid now in cash,  
10 would fairly and reasonably compensate Plaintiff  
11 Carter for her emotional distress, pain and  
12 suffering, inconvenience, mental anguish, and loss of  
13 enjoyment of life Defendant Local 556 caused  
14 Plaintiff Carter?

15 Answer in dollars and cents for the  
16 following items and none other.

17 One, past pain and suffering,  
18 inconvenience, mental anguish, and loss of enjoyment  
19 of life.

20 Answer in dollars and cents.

21 Two, future pain and suffering,  
22 inconvenience, mental anguish, and loss of enjoyment  
23 of life.

24 Answer in dollars and cents.

25 If you answered yes to Question 5, then

1 answer Question 15. If you answered yes to  
2 Question 6, then answer Question 15. If you  
3 answered yes to Question 7, then answer Question 15.

4 Otherwise, skip to Question 17.

5 Question 15. Punitive damages against  
6 Local 556 for Title VII claims.

7 Do you find that Plaintiff Carter should  
8 be awarded punitive damages against Defendant Local  
9 556 for violating Plaintiff Carter's religious  
10 rights under Title VII?

11 Answer yes or no.

12 If you answered yes to Question 15, then  
13 answer Question 16. If you answered no to  
14 Question 15, skip to Question 17.

15 Question 16. Punitive damages against  
16 Local 556 for Title VII claims.

17 What sum of money should be assessed  
18 against Defendant Local 556 as punitive damages  
19 against Local 556 for violating Plaintiff Carter's  
20 religious rights under Title VII?

21 Answer in dollars and cents.

22 If you answered yes to Question 5, then  
23 answer Question 17. If you answered yes to  
24 Question 6, then answer Question 17. If you  
25 answered yes to Question 7, then answer Question 17.

1 Otherwise, skip to Question 19.

2 Question 17. Nominal damages against  
3 Local 556 for Title VII claims.

4 Do you find that Plaintiff Carter should  
5 be awarded nominal damages against Defendant Local  
6 556 for violating Plaintiff Carter's religious  
7 rights under Title VII?

8 Answer, yes or no.

9 If you answered yes to Question 17, then  
10 answer Question 18. If you answered no to  
11 Question 17, skip to Question 19.

12 Question 18. Nominal damages against  
13 Local 556 for Title VII claims. What sum of money  
14 should be assessed against Defendant Local 556 as  
15 nominal damages against Local 556 for violating  
16 Plaintiff Carter's religious rights under Title VII.

17 Answer in dollars and cents.

18 If you answered yes to Question 2, then  
19 answer Question 19. If you answered no to  
20 Question 2, skip to Question 21.

21 Question 19. Nominal damages against  
22 Local 556 for duty of fair representation claim.

23 Do you find that Plaintiff Carter should  
24 be awarded nominal damages against Defendant Local  
25 556 for violating its duty of fair representation

1 owed to Plaintiff Carter?

2 Answer yes or no.

3 If you answered yes to Question 19, then  
4 answer Question 20. If you answered no to  
5 Question 19, skip to Question 21.

6 Question 20. Nominal damages against  
7 Local 556 for duty of fair representation claim.

8 What sum of money should be assessed  
9 against Defendant Local 556 as nominal damages  
10 against Local 556 for violating its duty of fair  
11 representation owed to Plaintiff Carter.

12 Answer in dollars and cents.

13 If you answered yes to Question 3 and no  
14 to Question 4, then answer Question 21. Otherwise,  
15 skip to Question 23.

16 Nominal damages against Local 556 for  
17 Railway Labor Act retaliation claim.

18 Do you find that Plaintiff Carter should  
19 be awarded nominal damages against Defendant Local  
20 556 for retaliating against Plaintiff Carter for  
21 exercising her rights under the Railway Labor Act?

22 Answer yes or no.

23 If you answered yes to Question 21, then  
24 answer Question 22. If you answered no to  
25 Question 21, skip to Question 23.

1                   Question 22. Nominal damages against  
2 Local 556 for the Railway Labor Act retaliation  
3 claim.

4                   What sum of money should be assessed  
5 against Defendant Local 556 as nominal damages  
6 against Local 55 of retaliating against Plaintiff  
7 Carter for exercising her rights under the Railway  
8 Labor Act?

9                   Answer in dollars and cents.

10                  If you answered yes to Question 2, then  
11 answer Question 23. If you answered yes to  
12 Question 3 and no to Question 4, then answer  
13 Question 23. If you answered yes to Question 5,  
14 then answer Question 23. If you answered yes to  
15 Question 6, then answer Question 23. If you  
16 answered yes to Question 7, then answer Question 23.

17                  Otherwise, skip to Question 24.

18                  This is a question for the Court on which  
19 the Court seeks the jury's advice.

20                  Question 23. Front pay damages against  
21 Local 556.

22                  What sum of money, if paid now in cash,  
23 would fairly and reasonably compensate Plaintiff  
24 Carter for future lost wages, if any, Defendant  
25 Local 556 caused Plaintiff Carter?



1 Answer in dollars and cents.

2 Now, Part B, Southwest damages questions.

3 If you answered yes to Question 8 and no  
4 to Question 9, then answer Question 24. If you  
5 answered yes to Question 10, then answer  
6 Question 24. If you answered yes to Question 11 and  
7 no to Question 12, then answer Question 24.

8 Otherwise, skip to Question 25.

9 Question 24. Lost wages, damages against  
10 Southwest.

11 What sum of money, if paid now in cash,  
12 would fairly and reasonably compensate Plaintiff  
13 Carter for lost wages and benefits, if any,  
14 Defendant Southwest caused Plaintiff Carter?

15 Answer in dollars and cents for the  
16 following items and none other.

17 One, lost wages sustained between  
18 March 14, 2017, and the date of the jury's decision.

19 Answer in dollars and cents.

20 Two, lost benefits sustained between  
21 March 14, 2017, and the date of the jury's decision.

22 Answer in dollars and cents.

23 If you answered yes to Question 10, then  
24 answer Question 25. If you answered yes to  
25 Question 11 and no to Question 12, then answer

1 Question 25.

2 Otherwise, skip to Question 26.

3 Question 25. Non-economic damages against  
4 Southwest for Title VII claims.

5 What sum of money, if paid now in cash,  
6 would fairly and reasonably compensate Plaintiff  
7 Carter for her emotional distress, pain and  
8 suffering, inconvenience, mental anguish, and loss  
9 of enjoyment of life Defendant Southwest caused  
10 Plaintiff Carter?

11 Answer in dollars and cents for the  
12 following items and none other.

13 One, past pain and suffering,  
14 inconvenience, mental anguish, and loss of enjoyment  
15 of life.

16 Answer in dollars and cents.

17 Two, future pain and suffering,  
18 inconvenience, mental anguish, and loss of enjoyment  
19 of life.

20 If you answered yes to Question 10, then  
21 answer Question 26. If you answered yes to  
22 Question 11 and no to Question 12, then answer  
23 Question 26.

24 Otherwise, skip to Question 28.

25 Question 26. Punitive damages against

1 Southwest for Title VII claims.

2 Do you find that Plaintiff Carter should  
3 be awarded punitive damages against Defendant  
4 Southwest for violating Plaintiff Carter's religious  
5 rights under Title VII?

6 Answer yes or no.

7 If you answered yes to Question 26, then  
8 answer Question 27. If you answered no to  
9 Question 26, skip to Question 28.

10 Question 27. Punitive damages against  
11 Southwest for Title VII claims.

12 What sum of money should be assessed  
13 against Defendant Southwest as punitive damages  
14 against Southwest for violating Plaintiff Carter's  
15 religious rights under Title VII?

16 Answer in dollars and cents.

17 If you answered yes to Question 10, then  
18 answer Question 28. If you answered yes to  
19 Question 11 and no to Question 12, then answer  
20 Question 28.

21 Otherwise, skip to Question 30.

22 Question 28. Nominal damages against  
23 Southwest for Title VII claims.

24 Do you find that Plaintiff Carter should  
25 be awarded nominal damages against Defendant

1 Southwest for violating Plaintiff Carter's religious  
2 rights under Title VII?

3 Answer yes or no.

4 If you answered yes to Question 28, then  
5 answer Question 29. If you answered no to  
6 Question 28, skip to Question 30.

7 Question 29. Nominal damages against  
8 Southwest for Title VII claims.

9 What sum of money should be assessed  
10 against Defendant Southwest as nominal damages  
11 against Southwest for violating Plaintiff Carter's  
12 religious rights under Title VII?

13 Answer in dollars and cents.

14 If you answered yes to Question 8 and no  
15 to Question 9, then answer Question 30.

16 Otherwise, skip to Question 32.

17 Question 30. Do you find that Plaintiff  
18 Carter should be awarded nominal damages against  
19 Defendant Southwest for retaliating against  
20 Plaintiff Carter for engaging in activity protected  
21 by the Railway Labor Act?

22 If you answered yes to Question 30, then  
23 answer Question 31. If you answered no to  
24 Question 30, skip to Question 32.

25 Question, 31. What sum of money should be

1 assessed against Defendant Southwest as nominal  
2 damages against Southwest engaging in activity  
3 protected by the Railway Labor Act?

4 Answer in dollars and cents.

5 If you answered yes to Question 8 and no  
6 to Question 9, then answer Question 32. If you  
7 answered yes to Question 10, then answer  
8 Question 32. If you answered yes to Question 11 and  
9 no to Question 12, then answer Question 32.

10 Otherwise, skip to Question 33.

11 This is a question for the Court on which  
12 the Court seeks the jury's advice.

13 Question 33 -- 32, sorry. Front pay  
14 damages against Southwest.

15 When sum of money, if paid now in cash,  
16 would fairly and reasonably compensate Plaintiff  
17 Carter for future lost wages, if any, Defendant  
18 Southwest caused Plaintiff Carter?

19 Answer in dollars and cents.

20 Question 33. Mitigation questions.

21 Do you find that Plaintiff Carter failed  
22 to reduce her damages through the exercise of  
23 reasonable diligence in seeking, obtaining, and  
24 maintaining substantially equivalent employment  
25 after the date of her employment termination by

1 Defendant Southwest?

2 Answer yes or no.

3 Question 34. How much would Plaintiff  
4 Carter have earned had she exercised reasonable  
5 diligence under the circumstances to minimize her  
6 damages?

7 Answer in dollars and cents, if any.

8 And then the last page is where the jury  
9 foreperson will sign and date the verdict form.

10 Y'all have earned a break. I'm going to  
11 give you one before we launch into closing. So  
12 let's do to a 10-minute break. Let's come back at  
13 10:15.

14 Because you are not deliberating yet, you  
15 still can only talk to your fellow jurors, just not  
16 about the case. Don't do any research.

17 We will see you in 10 minutes at 10:15.

18 (Recess.)

19 (The jurors exited the courtroom.)

20 THE COURT: Anything before we take our  
21 break?

22 MR. McKEEBY: I did think of one thing.

23 What are the protocols in terms of how  
24 long into the evening the jury might deliberate?

25 THE COURT: It's entirely within their

1 discretion.

2 So when we finish closing and I send them  
3 back, then I tell them that we now operate on their  
4 schedule instead of them on ours.

5 But I will ask them to, after they pick a  
6 foreperson, pick a schedule, at a minimum, an end  
7 time today, so that we can know to operate on their  
8 schedule.

9 I have never seen a jury pick oddball  
10 hours. I have seen them truncate certain parts of  
11 the day when someone had a scheduling conflict and  
12 deliberations went long, but I haven't seen juries  
13 go into the night, for instance. That might only  
14 happen if it's like tonight and they are close.  
15 That's not a normal occurrence.

16 So I will ask them to pick a foreperson,  
17 pick a schedule, at a minimum, an end time today,  
18 and then we will send them on.

19 I will only tell them about Judge Kinkeade  
20 stepping in for deliberations when I tell them those  
21 instructions at the end. I don't want them thinking  
22 about that. I want them thinking about the case, if  
23 that makes sense. So I will tell them those three  
24 things at the end.

25 Any other questions?

1 Okay. See y'all at 10:15.

2 (Recess.)

3 THE COURT SECURITY OFFICER: All rise.

4 THE COURT: Mr. Pryor, are you ready?

5 MR. PRYOR: Yes, your Honor.

6 THE COURT: Everyone else? Anything else?

7 Okay. Let's bring them in.

8 MR. PRYOR: What if I said no?

9 THE COURT: You better be, was going to be  
10 my response.

11 MR. PRYOR: I don't think that was an  
12 optional question.

13 THE COURT: I'm trying to be nice.

14 MR. PRYOR: You are. I appreciate it.

15 THE COURT: Y'all have earned niceness at  
16 this point from me.

17 (The jurors entered the courtroom.)

18 THE COURT: Okay. You can be seated.

19 So for closing, the order of it goes, we  
20 are doing Carter, Southwest, Union, and then the  
21 plaintiff can always save about up to 10 minutes for  
22 the final word. We call it rebuttal.

23 So we are going to go in that order. We  
24 will break for lunch not in the middle of someone's  
25 closing, so we will try to be flexible on timing for



1 a lunch break. We may have some of that closing  
2 happen after lunch, and then early afternoon y'all  
3 will get the case.

4 So with that, Mr. Pryor, you can close on  
5 behalf of Carter.

6 MR. PRYOR: Thank you, your Honor.

7 Based on the jury instructions that the  
8 judge just read to you, if you believe Charlene  
9 Carter sent the two Facebook message posts to  
10 Ms. Stone as union president to complain about the  
11 Women's March, if she did that, and the Union  
12 president then reports her to Southwest Airlines,  
13 that violates the Railway Labor Act. That violates  
14 her rights regarding her union activity.

15 Their defense is, well, that was just  
16 really offensive. That video was just too  
17 offensive.

18 We're going to talk about the jury  
19 instructions a little bit later, but I want to talk  
20 about one of them right now on page 13.

21 And it says, "In regard to that union  
22 activity, activity that is intemperate, abusive,  
23 insulting or hyperbolic" -- I don't know if I'm  
24 pronouncing that right -- "is protected activity."

25 Abusive. Abusive, according to Webster,

1 is extremely offensive. And so the fact that that  
2 video, someone says they thought it was extremely  
3 offensive, that's protected speech and it should be.

4 Robust speech is protected under the RLA.

5 The same in regard to Southwest Airlines.  
6 Southwest Airlines was told this was union activity,  
7 and when Southwest Airlines fires her for that union  
8 activity, that violates her RLA rights.

9 And it's the same thing. Their policy  
10 doesn't overcome that law. That same robust speech  
11 is protected.

12 I didn't ask questions of the Southwest  
13 witnesses that got up on the stand and said, Yeah,  
14 that was very offensive. Mr. Sims said, Very  
15 impactful. Kind of the point.

16 But the fact that they were offended  
17 doesn't take it out of protected speech.

18 I recall in voir dire asking about how you  
19 felt about speech, and are you an 8, 9 or 10? And I  
20 think you all were. And we asked you to follow the  
21 judge's instruction, follow that law. That's a  
22 clear violation of her rights under the RLA.

23 Likewise, whenever Audrey Stone, president  
24 of the Union, sent her complaint to Southwest  
25 Airlines, she was complaining, in part, about

1 Ms. Carter's exercise of her religious beliefs. She  
2 shouldn't be talking to me about religion, she  
3 didn't know what my religion is. She shouldn't be  
4 sending this to me.

5 That also is protected speech. She  
6 acknowledged that one of the reasons she was  
7 reporting her was for exercising her religious  
8 beliefs. So they violated what is called Title VII  
9 in your jury instructions.

10 The same way with Southwest Airlines.

11 So Southwest Airlines is told, I put this  
12 post on my Facebook because of my religious beliefs.  
13 I want to tell as many people as I can how I feel  
14 about abortion, that it is killing a life, it is  
15 killing a baby. And she told them, I'm doing that  
16 because of my Christian beliefs.

17 And knowing that, they said, Okay, we are  
18 now going to fire you for that.

19 Now, they will say, But we didn't care  
20 that she was doing it because she was a Christian.  
21 That wasn't why we were doing it.

22 No, you were told, I posted that because  
23 of my religious beliefs, and they fired her for  
24 exercising that religious belief. It's their  
25 actions that violate the statute, not what they are

1 thinking in their minds.

2 And they will tell you, well, it was --  
3 there was a nexus. And you will be able to look at  
4 their policy. You will be able to decide if you buy  
5 the nexus.

6 Their policy says it has to be so related  
7 to Southwest Airlines that somebody is going to get  
8 confused and think you are speaking for Southwest  
9 Airlines. We know that's not the case from a post  
10 from five years ago.

11 So we believe that we presented you with a  
12 case to demonstrate that Ms. Carter's union activity  
13 rights were violated. She was fired because of it  
14 as well as her religious freedom rights under Title  
15 VII.

16 I want to talk to you about the evidence,  
17 and then I'll talk to you about the jury  
18 instructions. I'm going to go through the evidence.

19 I appreciated that so many of you took  
20 notes. And it is very helpful, there are a lot of  
21 exhibits here, and we hope to get you a hard copy as  
22 well as the flash drive. But I want to mention some  
23 exhibits to remind you of them, tell you the exhibit  
24 numbers in case you want to look at them.

25 Going way back to the beginning of trial,

1 we looked at Exhibit 6, the Collective Bargaining  
2 Agreement, and I showed it to the Union president  
3 that negotiated the contract. And it said, All  
4 employees shall be free to engage in lawful union  
5 activities or refrain from such activities.

6 No one is claiming anything Ms. Carter did  
7 was unlawful. So she engaged in lawful union  
8 activity.

9 And then the agreement in Article III goes  
10 on to say that employees covered by this agreement  
11 shall be governed by all company rules which are not  
12 in conflict with the terms and conditions of this  
13 agreement.

14 And we just read that the agreement says  
15 you can't interfere with lawful union activity.

16 And so the Collective Bargaining Agreement  
17 entered into by Southwest and the Union says she's  
18 protected.

19 And, in fact, I asked Ms. Stone about it,  
20 one of the first questions when she was on the  
21 stand.

22 "So if an employee is engaged in lawful  
23 union activity, Southwest policies don't apply?  
24 That is your understanding, true?

25 "Yes."

1 And yet she reports her.

2 I want to look at some emails in terms of  
3 how Ms. Carter was treated.

4 You may recall from the judge reading  
5 it -- I feel sorry for the judge having to read it  
6 and you guys having to listen -- but the words in  
7 there, it is important for you guys to be familiar  
8 with it.

9 But it talks about that Ms. Carter has to  
10 be treated equally and fairly as every other union  
11 member, whether she's a member or not. It covers  
12 objectors, it covers any employee.

13 And if you look at Exhibit 24, I think it  
14 is, yes, Exhibit 24, this is the email where  
15 Ms. Carter -- this was back in 2013, I think. Let's  
16 see. No, 2014.

17 So if you go to the beginning of  
18 Exhibit 24, Exhibit 24 is where Ms. Carter finds  
19 out, you know what, that COPE money I have been  
20 paying, I just found out that's for political things  
21 that I don't agree with.

22 And she had every right, Ms. Stone  
23 acknowledged, she had every right to say, Don't use  
24 my money for that. Quit doing that.

25 And instead what you see internally as to

1 how they view and treat people that disagree with  
2 them.

3 If you will go on up.

4 And it says, "Ha, she's been supporting  
5 the things she despises this entire time. This just  
6 made my morning."

7 And Audrey Stone, the president, is on  
8 there.

9 Go to the first page.

10 "I wish you could give her a list of all  
11 of the campaigns that she's donated to in the last  
12 17 years. Her head would explode.

13 So they've improperly taken money from her  
14 for 17 years, and they are making fun of her.

15 Now, let's look at Exhibit 27.

16 So the reason I'm going through this is to  
17 show you how the Union, their job, their obligation  
18 is to treat all of their union members equally and  
19 fairly, and you know that they don't.

20 Exhibit 27, if you go to the beginning of  
21 this one -- you don't even have to do that. I have  
22 got limited time. But if you read Exhibit 27 --

23 Actually, do go to the previous page.

24 Exhibit 27 is the -- an officer of the  
25 Union, Brett Nevarez, is talking about getting rid

1 of Mike Casper, who is -- I don't remember if  
2 Mr. Casper at this point was an objector or if he  
3 just didn't agree with union membership.

4 But he did something, and they say, "It is  
5 leg-breaking time for Casper the Ghost."

6 And if you go on up, of course, Rocky  
7 Mountain we come to learn is Mike Hafner, an  
8 executive at Southwest Airlines, who is involved in  
9 this. And he goes, "Yeah. He's such an ass."

10 And then if you go on up, you'll see that  
11 Audrey Stone is on these emails.

12 And she's president of the Union -- she  
13 was in the other one, too, of course -- and not one  
14 time, not one email -- we have looked at a bunch,  
15 and there are more to come, and I won't have time to  
16 do them all, you will be happy to know -- but not  
17 one time, not one time does she say, Hey this is  
18 improper. We are treating these employees  
19 differently. We are going after these people when  
20 we shouldn't. Not one time.

21 Let's look at Exhibit 25.

22 Exhibit 25 is an email regarding  
23 Ms. Carter. If we go to the first page -- or the  
24 second page, you will see that someone in the Union,  
25 I can't remember which one, monitoring what these



1 objectors are doing has gone on to Facebook or  
2 somewhere and found a post of Ms. Carter.

3 And Ms. Carter, among other things, is  
4 saying, You know what, I am so sick of the  
5 corruption in this union, and I'm a non-member  
6 objector, but I think it's time to get rid of TWU.

7 Her view was decertify this, start a union  
8 that is appropriate.

9 And so the Union leadership gets this, and  
10 you will see on the first page that Brett Nevarez  
11 sends this to Audrey Stone. "Cuyler's favorite is  
12 threatening to de-cert now that she's not a member  
13 and cannot be charged. I'm contacting legal counsel  
14 and will keep you advised."

15 So this goes to the president.

16 She says, No, you can't do that. I  
17 understand she's an objector, but you can't take  
18 action against her.

19 They treat her differently from the start.

20 Exhibit 141.

21 So in opening, I told you that you are  
22 going to see communications between the Union and  
23 senior executives of Southwest Airlines talking  
24 about targeting union members that the Union  
25 leadership doesn't like, including targeting a

1 potential African-American leader because she's  
2 African-American.

3 Now, you had to think, come on. That's  
4 not true. That didn't happen. And you know it did.

5 Mr. Talburt is communicating with  
6 Ms. Lacore, who you know is senior at Southwest  
7 Airlines. And they are talking about Casper as  
8 being a tumor, that Ms. Corliss particularly is  
9 someone we have not seen and is incredibly  
10 dangerous. "The attitude she spawns as Northwest  
11 Airlines in the '80s. I'm all about targeted  
12 assassinations. I'm sure her dreadful work history  
13 there could be opportunity. She will play very well  
14 to the heavy inner-city minority" --

15 I mean, I can go on. But this shows the  
16 Union leadership, not just among the Union  
17 leadership, but with leadership at Southwest  
18 Airlines, is plotting against anybody the Union is  
19 opposed to.

20 And by the way, his deposition, that was  
21 such -- the sound was so terrible, and I'm sorry.  
22 But if you could read the words, he talks about they  
23 wanted to keep the rest of these communications off  
24 record, and he testifies that, in fact, he did have  
25 personal communications with Sonya Lacore about

1 targeting these people.

2 Let's look at a couple more in this  
3 regard. Exhibit 29.

4 This is the CORE team.

5 First of all, do you have the CORE team  
6 administrators that show Audrey Stone, TWU?

7 What this post is, this is just one of  
8 many posts from the CORE team. The CORE team, if  
9 you recall, is Audrey Stone's team that was trying  
10 to help get her elected.

11 It was all supposed to be secret and it all  
12 became public, and they had said a lot of really  
13 nasty things.

14 But it shows that -- it's the next page? Maybe  
15 it's not this exhibit. It's not this exhibit.  
16 Maybe it's the one keeping up.

17 But it shows that they are going after  
18 Mr. Click. That was someone who had actually been  
19 elected to office and kicked out.

20 Let's look at -- it's number 12 on my list,  
21 Matt. I don't know if you know where it is. But if  
22 not, you can move on to 56.

23 It's not that.

24 So let's look at Exhibit 56.

25 And this kind of brings us up to date in

1 terms of the Women's March.

2 And in 2017, Ms. Carter, who had been  
3 complaining to her union every time something came  
4 up she didn't agree with that was serious -- you  
5 will see the communications, it's in the exhibits --  
6 she was engaging in absolutely protected union  
7 activity.

8 And then she sees -- what have we got  
9 here?

10 MR. HILL: 12.

11 MR. PRYOR: Okay. So I guess I mentioned  
12 to Matt I wanted -- there is an exhibit that shows  
13 Audrey Stone, TWU.

14 But this is Ms. Stone's testimony where  
15 she acknowledges that she had a Facebook page that  
16 was TWU, and used it for her campaign.

17 She says she changed at some point, she  
18 doesn't know when. Our client testifies it was  
19 Audrey Stone, TWU, when she communicated with her.  
20 But, frankly, it wouldn't matter. The communication  
21 itself says she's complaining about the Union and it  
22 went to her Union president.

23 Thank you for that.

24 Oh, here we go.

25 So in January of 2017, the Union starts

1 posting these activities from the march.

2 Charlene wasn't aware they were spending  
3 money on the march, and she sees this and she is  
4 very upset. She's upset that her union has done  
5 this without seeking a vote from the membership  
6 before going to a politically charged event,  
7 especially one sponsored by Planned Parenthood.

8 Again, I'm not up here trying to say there  
9 is anything wrong with my body, my choice, or the  
10 other side, for that matter.

11 But to Charlene Carter, this was not what  
12 she wanted her union to do, and she wanted to tell  
13 her union that. And she did.

14 And you have seen the posts that she sent,  
15 or the Facebook messages, rather, that she sent, and  
16 we will talk about those.

17 But at this time, there were other things  
18 going on. Remember the emails that we just looked  
19 at where they were talking about using social media  
20 policy. Well, that plan was coming to fruition in  
21 February of 2017.

22 And counsel for the Union says, Well, you  
23 know, she sent all of these other messages to Audrey  
24 Stone and Audrey Stone never complained before.

25 It wouldn't matter. The message that was

1 sent was still protected. The fact that she decided  
2 to send that one doesn't change the fact that that  
3 was a protected communication from Charlene Carter.

4 But we think there was more going on.

5 You can see -- I'm going to just kind of  
6 run through these -- the Exhibit 21-Q -- is that  
7 21-Q?

8 They are talking about and, in fact,  
9 turning in to Southwest Airlines Jeanna Jackson, and  
10 who is on there, Audrey Stone.

11 That's the day after the complaint about  
12 Ms. Carter.

13 And then if you look at Exhibit 21-R, this  
14 is more complaints with Ms. Stone on it about Jeanna  
15 Jackson.

16 And 21-T.

17 There is no need to show all of these.

18 21-U.

19 21-V shows complaint after complaint after  
20 complaint with the Union president on it in February  
21 of 2017 and after regarding Ms. Jackson.

22 Now, there is -- there is more.

23 If you look -- go to Exhibit 69.

24 It is 27 on my list.

25 These are reports, 68, 69, 70. These

1 exhibits, 68, 69, 70, 71, those are emails with  
2 attachments half an inch thick going from this union  
3 member to Southwest Airlines complaining about  
4 social media policy.

5 But if you look at the email below,  
6 February 9th is when the information came.

7 You can look at another one. Let's look  
8 at a different one. Which one is that?

9 Go to one of the other ones, 68, 69.

10 So here is one.

11 If you look, this -- February 22nd, 2017.  
12 Brian Talburt, her inside person, sends all of these  
13 complaints about people to Southwest Airlines.

14 Look when he got them. Look down below.  
15 January 31, 2014. They have had them all of this  
16 time, and they have decided on February 22nd, the  
17 very day that the complaint is made against  
18 Ms. Carter. And there is not just one of these,  
19 it's 68, 69, 70, 71. You put them all together, it  
20 is quite a thick little dossier.

21 So we find it hard to believe that this  
22 was a coincidence. These posts that have been  
23 around for years and have been gathered for years,  
24 they all coalesce on February 22, 2017.

25 And then let's look at Exhibit 38.

1 Exhibit 38 is the read-before-fly.

2 So the read-before-fly, the name on there  
3 is Sonya Lacore, and it is February 22nd, 2017.

4 It talks about two policies. There is  
5 only one of these that does this. But they have  
6 three where the social policy is mentioned.

7 By the way, three and four and a half  
8 years. That's a 3 in 1500 chance that it would just  
9 happen to be on that same day, February 22nd, 2017.

10 But it is about social media and  
11 anti-bullying policies, and it's the same Sonya  
12 Lacore that was in the communications with Brian  
13 Talburt.

14 The same Sonya Lacore -- let's look at  
15 Exhibit 68.

16 I can't remember if there was  
17 instructions. I would have to read all of the  
18 exhibits. So I don't know if that's your obligation  
19 or not.

20 But in case it's not, I want to mention  
21 Exhibit 21-C, Exhibit 21-D. You'll see these.

22 In 21-D, they are actually talking about  
23 should we investigate -- this is Southwest Airlines  
24 saying, Should we investigate this person that is  
25 trying to topple the Union?



1 But if you look at Exhibit 68 -- I think  
2 it is 68. No, it is 66. I'm sorry. It's  
3 Ms. Stone's complaint. So let's look at that.

4 And you see the name on there is Sonya  
5 Lacore. And I think it's pretty clear why she put  
6 Ms. Lacore on there. And she also included  
7 Ms. Hudson, who was on the negotiating team for the  
8 Collective Bargaining Agreement, as was Audrey  
9 Stone.

10 And in this complaint, in the first  
11 paragraph -- this is the next one, but I will  
12 mention in the first paragraph, it talks about union  
13 activity, and then it talks about religious and  
14 political activity. And she's complaining about  
15 those.

16 And by the way, she doesn't complain about  
17 the message with the hats, but Southwest got that  
18 and included that as part of her complaint.

19 So clearly she is reporting union  
20 activity, and she's reporting religious activity,  
21 and she's doing it as the president of the Union.  
22 She received it as president of the Union.

23 Let's look at 74.

24 Actually, let's go to the attachments.  
25 Let's talk about them for a second.

1 Pages 3 and 4.

2 Okay. So this is the message that she's  
3 complaining about. And it's clear when she says,  
4 "This is what you supported during your paid leave  
5 with others at the Women's March in DC. You truly  
6 are despicable in so many ways.

7 "By the way, the recall is going to  
8 happen, and you are limited in the days you will be  
9 living off of all the SWA flight attendants. Can't  
10 wait to see you back on line."

11 Now, she's not sending that to her  
12 because, you know, I saw you at the PTA meeting and  
13 I didn't like the dress you were wearing. She  
14 didn't send it to her because she's a flight  
15 attendant, and said, You passed out too many peanuts  
16 on that flight. She's sending it to her as her  
17 union president and complaining about her money  
18 being used this way.

19 You don't have to agree with the speech  
20 and you can consider it extremely offensive, but it  
21 is protected by the law. And, frankly, it should  
22 be, whether you agree with it or not. And somebody  
23 else's speech in the opposite direction should  
24 absolutely be protected.

25 By the way, one of the words that the law

1 says is it can be insulting. And I guess you  
2 consider this a little insulting where it says  
3 "you're despicable." That seems insulting even if  
4 she considers it descriptive.

5 But it's protected speech. You can't take  
6 action against someone for that protected speech.  
7 And we are asking you to protect that speech.

8 Okay. Let's look at -- the next one, too.  
9 Let's go ahead and do both.

10 This is the same thing. "And either way,  
11 you should not be using our dues to have marched in  
12 this despicable show of trash."

13 So once again, it's clearly union-related  
14 speech, and it is protected, robust speech like this  
15 is protected.

16 Okay. Exhibit 74.

17 In fact, Mr. Schneider, when he received  
18 this complaint for Southwest Airlines, the very next  
19 day -- and actually, he may have received it on the  
20 23rd -- either the day of or the next day, he sends  
21 it to employee relations and says, Let me know your  
22 thoughts on protected categories.

23 And there is not one response -- there is  
24 a response from employee relations, but they don't  
25 address the protected categories.

1 So I asked him:

2 "QUESTION: Did they tell you about any  
3 protected categories that you should consider as  
4 part of your investigation prior to making your  
5 termination decision?

6 "ANSWER: Not that I recall.

7 "QUESTION: You considered no other  
8 protected categories other than genitalia and how it  
9 might violate a sexual harassment policy, that's the  
10 only protected category you considered in your  
11 investigation prior to making your decision?

12 "ANSWER: Yes.

13 "QUESTION: So is it fair to say there was  
14 no consideration" -- this is Southwest Airlines --  
15 "there was no consideration given to Ms. Carter's  
16 religious beliefs in regard to your investigation or  
17 termination decision?

18 "ANSWER: True."

19 They didn't even consider it.

20 Let's look at Exhibit 39.

21 So they interviewed Audrey Stone,  
22 Southwest Airlines, and they heard over and over  
23 from Ms. Stone that this relates to union activity.

24 Let's look at some of the snippets of it.

25 You may have highlighted some of the

1 things, Matt.

2 So she is asked a question about  
3 Ms. Carter, and her answer is: "Since 2008 when I  
4 was on the board, she has not been union friendly.  
5 She is anti-union."

6 As a matter of fact, right above it,  
7 highlighted, "She's very anti-union."

8 So clearly she's talking about this being  
9 part of union activity.

10 Let's go on.

11 There's some other things I wanted to  
12 mention in here.

13 This is why I like hard copy. This is  
14 pretty handy, but I like to have the document.

15 Can you keep going on this document?

16 Okay. So what she testified in court,  
17 Ms. Stone, was that she was in the airport, and she  
18 goes into her Facebook Messenger and she has this  
19 message from Ms. Carter that automatically starts  
20 playing the video. And it's not the way Facebook  
21 works, so I asked her about it.

22 And she eventually decides, Well, I must  
23 have accidentally clicked on it, and that is what  
24 made it play. And I only watched a few seconds.  
25 But I was so upset, I couldn't get on the plane. I

1 was traveling on Union business.

2 Well, that's not what she told them in the  
3 interview. She said, I couldn't look at it at the  
4 airport. She had to leave the airport. She does  
5 testify she went back to the hotel and voluntarily,  
6 on her own, clicked, knowing what it was.

7 She wanted to see that speech, and now she  
8 wants to complain about it. But she has a much  
9 different story to what she told Southwest Airlines  
10 than what she told you.

11 There is something else in there. Oh,  
12 that is right.

13 And then what does she want?

14 So here she told you, You know, I  
15 really -- I filed this complaint because I was  
16 worried that Ms. Carter might send this to some  
17 other union members, and I have a girlfriend that's  
18 pregnant. And so I was worried. I was doing this  
19 to protect them.

20 Well, you know, she failed to say that  
21 whenever she was being interviewed by Southwest  
22 Airlines. She's saying, Make Charlene and Chris  
23 Click stop. Tell those flight attendants not to  
24 talk about me or the Union president trying to get  
25 flight attendants fired. They need to protect me.

1           She's talking about protecting me as Union  
2 president. Keep it a secret that the Union  
3 president is trying to get union members fired.

4           She clearly brought this complaint as  
5 Union president and she's asking for relief as Union  
6 president.

7           And she's not doing it for a pregnant  
8 friend.

9           Okay. Let's look at -- I think there is  
10 some Schneider testimony where he says -- he  
11 certainly testified, Mr. Schneider testified he  
12 agreed that all of Ms. Carter's communications were  
13 protected -- well, he doesn't know what protected  
14 is. He says union related.

15           And by the way, he should know. This is  
16 when the 28-year person at Southwest Airlines that  
17 is tasked with investigating this claim and making a  
18 termination decision.

19           And -- let's see if this is it.

20           This was good too. He said this several  
21 times.

22           "QUESTION: Can you recall any part of  
23 your investigation that revealed a comment to  
24 Ms. Stone, whether about her union that could be  
25 separated and say, you know, that's talking about

1 Audrey Stone outside her job as Union president.

2 Can you think of anything like that?

3 "ANSWER: No.

4 "QUESTION: So the only thing you know of  
5 is complaints about Ms. Stone as Union president in  
6 that context?

7 "ANSWER: From only the complaints, yes."

8 So the only thing that Southwest had  
9 was -- in Southwest's opinion, the opinion of the  
10 person they say terminated her, was that all of her  
11 communications, all of Ms. Carter's communications  
12 were union-related.

13 And so it's protected. It's protected  
14 whether it's intemperate, abusive, insulting,  
15 hyperbolic, extremely offensive, it's protected.  
16 And they didn't consider that.

17 You saw it before. They didn't consider  
18 that at all. Southwest Airlines is firing people  
19 for engaging in protected activity and not even  
20 considering it.

21 They are saying, Well, that -- that video  
22 was just very offensive.

23 Well, you still have to consider the Union  
24 activity. That video was offensive. You still have  
25 to consider her religious beliefs. And they did not



1 even consider them. And it's protected activity.

2 Let's look at 107, Exhibit 107. These are  
3 Mr. Schneider's notes.

4 Actually, I wanted to go over -- and maybe  
5 it is not on here, Matt. I apologize.

6 I wanted go over Charlene's notes from the  
7 fact-finding meeting. Do you have those?

8 It's Exhibit 98. Here we go.

9 So if you review Exhibit 98, this is  
10 Charlene was interviewed. And 98 goes on and on.  
11 But you will see that over and over she's telling  
12 Southwest Airlines, I am doing these things, I'm  
13 posting this, I'm putting this on my personal  
14 Facebook page because of my Christian beliefs.

15 You can go to -- there is a bunch of  
16 those. But if you review Exhibit 98, you will see  
17 her telling them this over and over.

18 And then she tells them, "It's my  
19 Christian, you know, beliefs."

20 She's telling them, here is why I'm doing  
21 this. It's my Christian beliefs.

22 She also over and over tells them that it  
23 is because she is complaining to her union. Our  
24 union went to the Women's March. I know that they  
25 wore inappropriate hats at this march, including our

1 president. They supported Planned Parenthood.

2 So she's coming in and she's telling  
3 Southwest Airlines, I'm engaged in union activity,  
4 I'm engaged in religious activity.

5 Do they consider it? Does employee  
6 relations say, Oh, yeah, we have got to consider  
7 that. We should consider whether or not we should  
8 accommodate it.

9 No. They just said, you know, that  
10 speech, to us, that video, that's -- that's too  
11 offensive.

12 And, respectfully, we don't think that's  
13 what the law is, we don't think that's what these  
14 jury instructions say.

15 You can go on to at least page 13. There  
16 are a lot of these. I mean, "This was done through  
17 our union. They were there next to Planned  
18 Parenthood." You will see this over and over.

19 "She doesn't represent us."

20 But I want to go to -- I don't know if you  
21 marked the one where Mr. Schneider says that her  
22 communications might make someone uncomfortable.

23 He's telling her, Okay, fine. You may  
24 have the right to do this, but this seems to be a  
25 little aggressive.

1 And then he goes on to say, It might make  
2 her feel uncomfortable.

3 So union-protected robust speech where you  
4 are complaining to your union, if it's a little too  
5 aggressive or it makes someone feel uncomfortable,  
6 Southwest Airlines says, We fire you.

7 That is not the law.

8 Okay. Let's go to Exhibit 49.

9 I just need to know how I'm doing on time.

10 I have used 10? Okay.

11 You know, I get paid by the words, so I'm  
12 using all of my time here.

13 I appreciate you staying awake and giving  
14 me as much attention as you think it deserves.

15 Okay. Let's look at Exhibit 41, the  
16 termination letter.

17 So they say in the termination letter  
18 itself, "You admitted you posted graphic videos of  
19 aborted fetuses on Facebook."

20 By the way, let's be fair here. She sent  
21 it in a private, protected message to her union  
22 president. They don't say that. They just say, You  
23 sent it to another flight attendant, like she just  
24 picked someone at random.

25 And they say, "You agreed that the

1 pictures and video were graphic."

2 So that's all it takes for them.

3 Let me go on down.

4 And then they say, "You posted graphic  
5 videos on Facebook, and you were identifiable as a  
6 Southwest employee and represented our company in a  
7 manner that is disparaging to Southwest Airlines."

8 That is what they are saying. You posted  
9 this video, and you did it identifiable as a  
10 Southwest Airlines employee.

11 Let's look at the policy. It's Exhibit 9,  
12 I think. The social media policy.

13 That's not it, but I like that one, too.  
14 But I would like No. 9.

15 MR. HILL: Yes.

16 MR. PRYOR: Okay.

17 And if you look in the second paragraph,  
18 it says, "Even if the social media communication  
19 does not reference Southwest directly or is posted  
20 anonymously, depending on the content of the  
21 communication, such statements can negatively impact  
22 Southwest, its employees, and/or its customers."

23 So none of that happened here, none, and  
24 they are trying to apply this policy.

25 So then they argue about a nexus. And so

1 they are worried about their brand. And a  
2 company -- that is fine, a legitimate concern about  
3 your brand, sure.

4 But if somebody posts something, and four  
5 and a half years ago -- by the way, every person  
6 that got up there and testified to them about the  
7 nexus, neither one of them said how long ago it was.  
8 Charlene told you.

9 It was four -- some of it was three, some  
10 of it was four, some of it was five years ago, and  
11 then there is the lanyard that you can't read.

12 That's not a nexus.

13 Even if it was a nexus, you will see in  
14 the jury instructions that Southwest's policy does  
15 not overcome her Title VII religious beliefs and  
16 rights. She had the right to post that video. If  
17 she had been standing there in her Southwest  
18 Airlines uniform, they've got an argument. If she  
19 had posted something the day before, no.

20 But Mr. Schneider asked him, So what do  
21 you think? Somebody from the general public is  
22 going to look at this and think, that is Southwest  
23 Airlines's position.

24 He said, Well, this is a hot-button issue.  
25 They might look at that and they'll start scrolling

1 back, looking for stuff.

2 So they're going to scroll back five  
3 years, and then they are going to see this picture  
4 of her in her Southwest Airlines uniform, and they  
5 are going to conclude from that, that Southwest  
6 Airlines, that must be Southwest Airlines's position  
7 on abortion.

8 Is that at all reasonable? Is that a  
9 basis for taking away her rights to express her  
10 religious beliefs? Is that -- I mean, whether you  
11 agree or disagree, pick another religious belief,  
12 pick any, and put it in that place. Is that right?  
13 Is that how Southwest Airlines should be able to  
14 take their social media policy and take away an  
15 individual's personal religious freedom?

16 MR. GILLIAM: Ten minutes.

17 MR. PRYOR: Oh, you are kidding.

18 Well, good news for you, I'm almost done.  
19 Bad news for me, I'm not done.

20 Let me skip to a couple of things then. I  
21 have got to get to the -- let me mention Exhibit 40,  
22 the last chance agreement. I won't call it up.

23 I wasn't able to mention that during  
24 opening for legal reasons, and counsel was able to  
25 talk to you about it. And once it was raised in

1 evidence, I was able to address it with Ms. Carter.

2 Ms. Carter, of course, wanted her job  
3 back, absolutely. But she wasn't willing to sign a  
4 document that said she can't exercise her religious  
5 freedom.

6 They can talk about that Step 2 hearing.  
7 At a Step 2 hearing, they say, you know, you were  
8 willing to stop doing this to get your job back.

9 Well, if you read it in context, it's a  
10 Hobson's choice. But she was willing, reluctantly,  
11 to give up to her complaints to the Union. She was  
12 like, Fine, if I can get my job back.

13 But she still wasn't willing to give up  
14 her religious freedom. She wasn't willing to do  
15 that. And so she lost her job for standing up for  
16 her rights.

17 All right. Let's go to the jury  
18 questions. Gosh, there's so much good stuff.

19 A couple of things I want to mention on  
20 the jury instructions. On page -- I have to do what  
21 is called a full open, which means I've got to  
22 address all of this. So I'm going to run through it  
23 and make sure I get it.

24 On page 3, preponderance of the evidence.  
25 Preponderance of the evidence -- it is

1 defined really well here -- but it is basically you  
2 take things that are equal, 50/50, and then you go  
3 50.1 and the other one is 49.9. The 50.1 wins.

4 Beyond a reasonable doubt, that's your  
5 high 90s. That's your criminal case.

6 Here, it's just what is more likely than  
7 not. There is no extra burden for the plaintiff  
8 here other than that 50.1.

9 Okay. Let's go to page 9.

10 Wow. This part I did. I did listen when  
11 the judge was reading all of this. This is -- you  
12 got to read -- this is great stuff.

13 "The duty of fair representation means a  
14 union must serve the interest of all employees  
15 whether they are union members or not."

16 It goes on to say, "They violate that when  
17 they act in bad faith or treat you differently."

18 The next page. "The law presumes a union  
19 breaches its duty when it causes the discharge of an  
20 employee."

21 The law presumes it. And that's what  
22 happened here.

23 And so you can go on, you can read those.

24 But we think that there is clear violation  
25 here.



1                   The retaliation, on page 12 it says,  
2       "Plaintiff Carter claims that Defendant Southwest  
3       retaliated against her by firing her for engaging in  
4       union opposition and organizational activity."

5                   And that's exactly what happened here.  
6       They fired her for her union activity. They knew it  
7       was union activity and they fired her for it. Their  
8       excuse is, Well, we thought it was offensive. That  
9       is not an excuse under the law.

10                  MR. GILLIAM: Five.

11                  MR. PRYOR: Can't be happening.

12                  Okay. So they failed to provide an  
13       accommodation.

14                  I want to talk about damages. Let's go to  
15       Question 1.

16                  And you can take notes on the questions  
17       that the judge gave you. You are not binding  
18       yourself to it. You can say, Oh, here is what that  
19       lawyer said. Here is what he thought.

20                  You guys are going to be the ones to  
21       decide.

22                  "Has Carter proved that Audrey Stone was  
23       acting in her official capacity as then president of  
24       Local 556 when she reported Carter to Defendant  
25       Southwest Airlines?"

1 We think that is a clear yes.

2 "Has plaintiff proved that Defendant Local  
3 556 violated the duty of fair representation?"

4 We just kind of went over some of those  
5 definitions. We believe the answer to that is yes.

6 Question 3. "Has Carter proved that  
7 Defendant Local 556 retaliated against Carter for  
8 engaging in activity protected by the Railway Labor  
9 Act?"

10 Absolutely. We believe the evidence  
11 strongly supports a yes answer.

12 Question 4. "Do you find that Local 556  
13 has proved that Local 556 would have reported Carter  
14 to Defendant Southwest even if Carter had not  
15 engaged in activity protected by the Railway Labor  
16 Act?"

17 The answer to that is no, among other  
18 reasons, because she didn't do anything else. All  
19 she did was engage in protected activity. Every  
20 single communication. It was admitted by  
21 Mr. Schneider, it was admitted by Ms. Stone. I had  
22 her go through it. Read every one of these. Show  
23 me something that is not union activity.

24 Question 4 is no.

25 Question 5. "Has Carter proved that

1 Defendant Local 556 unlawfully discriminated against  
2 her?"

3 Yes. She was treated much --

4 By the way, if Ms. Carter had received  
5 that video from Mr. Nevarez, would she have reported  
6 Mr. Nevarez? Was she going to report Brian Talburt?  
7 Was she going to report John Parrott?

8 She didn't report those people. They  
9 engaged in all kinds of robust communications.

10 No. Ms. Carter was treated differently.

11 The answer to 6, we believe, is yes.

12 The answer to 7, that they unlawfully  
13 failed to accommodate, yes, they unlawfully failed  
14 to accommodate. You can read the definitions. They  
15 failed to accommodate by reporting her for her  
16 religious and union activities.

17 No. 8, the same answers to Southwest  
18 Airlines for the same reasons. It's yes.

19 9, Southwest. Southwest proved that she  
20 would have been discharged anyway. Well, the only  
21 thing they discharged her for was that video and the  
22 pictures with the vagina hats, both of which are  
23 protected activity.

24 They fired her for -- you can agree or  
25 disagree with it, but they fired her for that

1 protected activity. So we believe the answer to 9  
2 is no. There was not -- as a matter of fact, the  
3 reason they gave was they said they thought -- they  
4 had every witness come up there and say it was  
5 offensive so they could tell you how upset they were  
6 about it.

7 Question 10, the same thing. She was  
8 treated differently because she was -- treated  
9 differently because of her religious beliefs and her  
10 union activity.

11 10 is yes.

12 11 is yes.

13 I have got to get to the damages.

14 12 is no.

15 What burden on Southwest Airlines to  
16 accommodate her religious beliefs? They could say,  
17 you know, you are right. Our policy doesn't apply  
18 to your religious activity and that nexus is too  
19 far. That is no good. That would be an  
20 accommodation.

21 Another would be to say, Well, why don't  
22 you take off those posts?

23 They could have done a lot of things that  
24 cost them not a penny. There is no undue hardship  
25 to have accommodated her.

1 Okay. Damage questions.

2 13. The lost wages. So her lost wages --  
3 she's been off work for over five years. She's  
4 looked for work.

5 There is a mitigation instruction here.  
6 And in the mitigation instruction, it says she  
7 doesn't have to take a job that is completely  
8 different than what she had.

9 In other words, if you're a flight  
10 attendant, you don't -- not that there is anything  
11 wrong with it because I have done it -- but you  
12 don't have to take a job flipping burgers at  
13 McDonald's.

14 And so she tried, she tried with four or  
15 five airlines to get jobs. You heard her testimony.

16 Her testimony was that she was making --  
17 would have made, from March 2017 forward, about  
18 80,000 a year. She had ramped up -- now it would be  
19 about 100,000 now. But 80,000 times five years, we  
20 believe that Question No. 1 should be 400,000.

21 I think the money is important. It's not  
22 why Charlene is here, but she's entitled to be  
23 compensated.

24 Lost benefits. She told you that was  
25 \$20,000 a year in lost benefits. That would be

1 \$100,000 for that answer.

2 And 14, pain and suffering.

3 I may go into my last 10 minutes because  
4 let me tell you, this has disrupted her life beyond  
5 belief. You know, when she got fired, she's on the  
6 floor praying with her husband and crying. From  
7 then to now, it has been a daily struggle for her  
8 not having a job.

9 Making it worse by then having a husband  
10 that has alcohol problems and raising a daughter by  
11 herself and she's dealing with all of this every  
12 single day.

13 As a matter of fact, this is before her  
14 husband's alcohol problems. She was so stressed out  
15 she had a walking stroke. Her life was at risk, her  
16 family was at risk.

17 I said, Would you take a million dollars?  
18 And she said, No.

19 And I believe it.

20 I would put a million dollars for the pain  
21 and suffering and a million for -- and I'm  
22 suggesting it, by the way. It's your decision. But  
23 I've got to do a full open. I need to make a  
24 suggestion to you.

25 Okay. Punitive damages. If you think the

1 Union acted as a bad actor here, this one, you can  
2 look at it and say, they have 15,000 members. You  
3 can -- fine them \$20 a member. That's \$300,000 to  
4 say, Don't do this anymore.

5 Frankly, the number should be a lot more.  
6 And to be honest with you, it doesn't matter what  
7 number you put it there, this union is not going to  
8 change. But you should try and change them.

9 Southwest Airlines.

10 Okay. This one is where -- I'm glad we  
11 have teachers on here, but I think I'm talking fifth  
12 grade math.

13 So Southwest Airlines, if you look at  
14 Exhibit 138, is worth \$10 billion and some change.  
15 That's what they are worth. That change is pretty  
16 big change. But \$10 billion.

17 So now take a millionaire and give a  
18 millionaire a \$200 ticket, a speeding ticket. So  
19 that's 200 over 1 million. Make it a fraction here.  
20 That equals X over 10 billion. What is X? X is  
21 \$2 million.

22 So if you think Southwest should be told,  
23 consider people's union activity, consider their  
24 religious beliefs. Mr. Schneider said they didn't  
25 even consider them.

1           If you think they should consider these  
2 things, if they should protect these rights, you are  
3 going to have to send that message.

4           \$2 million is a speeding ticket. I admit,  
5 I'm a speeder. Speeding tickets aren't terribly  
6 effective with me. I'm doing better. But if you  
7 think it should even be a speeding ticket, that is  
8 what it would take.

9           Okay. I have got to get to the rest of  
10 this.

11           MR. GILLIAM: Two minutes into your time.

12           MR. PRYOR: Nothing on the nominal  
13 damages.

14           Front pay. Front pay is she could go back  
15 to work today full-time. And it will be up to -- I  
16 think I can say this -- the judge's -- somebody else  
17 will decide whether or not she gets her job back.  
18 You don't get to make that decision. But one of the  
19 things you can do is suggest, okay, if she doesn't  
20 get her job back, she can have front pay. And  
21 \$100,000 a year for a three-year front pay, that  
22 would be \$300,000.

23           Listen, these attorneys are going to get  
24 to talk to you. And you were put on this jury. We  
25 didn't pick juries of lawyers, that is not the way



1 our system is set up. There's some countries it's  
2 lawyers that decide. Certainly some military  
3 tribunals, it's always the judge. Here in our  
4 country, it's Americans, it's average people. In a  
5 positive way I mean that.

6 So you don't have to become lawyers  
7 sitting here. This looks like a law school exam,  
8 but it's not. It's telling you what the law is, and  
9 it's then telling you, what do you think of these  
10 facts and what should be done?

11 I will get to talk to you again at the  
12 end. I hope I've covered everything. And I look  
13 forward to the last 10 minutes with you in I don't  
14 know how long. Thank you.

15 THE COURT: Okay. Thank you, Mr. Pryor.

16 I'm going to ask for a sidebar after every  
17 closing just so we can talk through any legal  
18 issues. So if we can huddle at sidebar real  
19 briefly.

20 (Thereupon, the following proceedings were  
21 had at sidebar:)

22 THE COURT: Thank you for taking it off.  
23 That was my first thing.

24 MR. PRYOR: Well, I didn't actually roam  
25 very much, so I didn't really need it.

1 THE COURT: Any issues you want to raise?

2 MR. McKEEBY: I think there was portions  
3 of the argument that went outside the scope of the  
4 instructions, particularly with respect to the  
5 communication and damages. So I would raise that.

6 MR. PRYOR: Mitigation?

7 MR. McKEEBY: Yes, mitigation.

8 MR. PRYOR: What did I do on mitigation?

9 MR. McKEEBY: In terms of saying she  
10 didn't have to accept anything outside of her --

11 MR. PRYOR: That's what the jury  
12 instruction says.

13 MR. McKEEBY: I don't think it says it  
14 quite the way you did. And so that's really my only  
15 basis for objecting.

16 MR. PRYOR: Okay. I'm entitled to argue  
17 my interpretation of that instruction.

18 THE COURT: I have thoughts on that.

19 But Mr. Greenfield, do you have other  
20 issues to raise?

21 I end up saying this after almost every  
22 closing argument is, remember, the law is what I  
23 gave you at the charge. Anything you heard from a  
24 lawyer about the law may be their interpretation.

25 MR. PRYOR: If I had had time, if I could

1 have found it, I would have read the exact words. I  
2 wasn't trying to --

3 MR. McKEEBY: The other thing is a minor  
4 point. I think he stated that the email address  
5 of -- I forget what it was -- Rocky Mountain was in  
6 evidence as Mr. Hafner's email address. I don't  
7 think that's in evidence.

8 MR. PRYOR: We got it from Mr. Nevarez and  
9 Mr. Lair, and I believe I got it from one of the  
10 witnesses. I can't remember.

11 THE COURT: Without having a transcript in  
12 front of me, what I can say is the same two things I  
13 normally always say. Everything you heard was not  
14 evidence and not the law. And I'm going to say that  
15 after every closing, right?

16 MR. PRYOR: Let me say, I just now  
17 remembered this too. I will do this in my last 10  
18 minutes. I appreciate it. That document itself --  
19 I have 10 minutes left.

20 THE COURT: Seven. But yeah, close.

21 MR. McKEEBY: Who's counting?

22 MR. PRYOR: Are you going to hold me to  
23 seven?

24 THE COURT: You can do a lot in seven.

25 MR. PRYOR: Okay. That document itself

1 says it's Mr. Hafner. So I certainly haven't gone  
2 beyond the --

3 THE COURT: I will give my standard  
4 disclosure, and then I will let you say you're  
5 sticking to the podium.

6 MR. PRYOR: You can do the standard  
7 disclosure right now.

8 THE COURT: I can save it for the end and  
9 say --

10 MR. PRYOR: Yes. I don't think that  
11 should be tagged to me.

12 THE COURT: Okay. So we will see what  
13 time we are at, but we may take a lunch break after  
14 you close. Do you have any guess as to how long you  
15 are going to close?

16 MR. McKEEBY: I think it's 30 minutes.

17 THE COURT: We may do lunch then and take  
18 you up after lunch.

19 MR. GREENFIELD: I love a sleepy jury.

20 MR. PRYOR: I thought we were done. I  
21 apologize.

22 THE COURT: I asked him how long he  
23 thought he would need. He said about 30 minutes.

24 I thought we would break for lunch after  
25 him and then take Greenfield and your rebuttal.

1 MR. PRYOR: That is fine. Thank you,  
2 Judge.

3 (Thereupon, the sidebar was concluded and  
4 the following proceedings were held in open  
5 court:)

6 THE COURT: Okay. Now you are going to  
7 hear closing argument from Mr. McKeeby on behalf of  
8 Southwest.

9 MR. McKEEBY: Thank you, ladies and  
10 gentlemen. I'm not sure if it's good news or bad  
11 news, but I do not get paid by the word. So I'll go  
12 a little bit more slowly.

13 First of all, I would like to say that I  
14 think I'm more proud to represent Southwest Airlines  
15 than any other company I ever have represented.

16 The reason I say that is simple. It's the  
17 people, the people who I had the pleasure of meeting  
18 in connection with this case, in connection with  
19 preparing for this trial.

20 And it is important because a critical  
21 aspect of Southwest Airlines's case is its culture,  
22 its culture in the workplace that emphasizes  
23 tolerance, that emphasizes respect for coworkers.

24 You saw those policies. I showed them to  
25 you at the beginning of my presentation in opening

1 statement. The social media policy. The bullying  
2 and hazing policy.

3 And the policies are important. I'm not  
4 going to show them again to you, but they are  
5 important. But that culture of respect and  
6 tolerance comes through more so from its employees  
7 and former employees.

8 I called to the witness stand many of  
9 those folks, and some of them were on the witness  
10 stand briefly. But I wanted you to hear them. I  
11 wanted you to hear them because they played a role  
12 in the case, certainly, but also because they could  
13 articulate to you the culture of Southwest Airlines.

14 Again, the culture of tolerance and  
15 respect for coworkers.

16 So you heard from people like Maureen  
17 Emlet, the labor relations manager who flew from  
18 Denver on a Southwest flight, I'm sure. She walked  
19 through the policies that I mentioned, we talked to  
20 her about that, but she also talked about the impact  
21 of that -- of those videos that Ms. Carter sent to  
22 Ms. Stone and how it affected her and how she had to  
23 walk around the headquarter building to collect  
24 herself after she saw those videos.

25 Also, on Monday, you heard from another

1 former employee, Ms. -- if you recall, Ms. Emlet is  
2 not a current employee, she's retired, as is Naomi  
3 Hudson, who you heard from Monday afternoon.

4 When I asked her what her reaction to  
5 seeing those videos were, she said -- she didn't  
6 say, I wanted to go look into my policy manual and  
7 see which policies were violated so that I could  
8 fire Ms. Carter. She said she was sad. She said it  
9 broke her heart to see those videos sent by one  
10 employee to another employee. And why is that?

11 Again, it is Southwest's culture.

12 And this is a woman who had worked for 20  
13 years for Southwest Airlines in labor relations.  
14 She's -- Ms. Hudson was Ms. Emlet's boss  
15 essentially. And she helped create that culture.  
16 And to see another employee like Ms. Carter, who is  
17 also a long-term employee, violate that culture by  
18 sending those videos to a co-employee broke her  
19 heart.

20 And that is what she told you.

21 Now, something that is ironic in this case  
22 is that one of the best witnesses for Southwest  
23 culture was Ms. Carter herself.

24 She told you repeatedly during this case  
25 how much she loved the company, how much she loved

1 Southwest Airlines.

2 And I didn't put -- this is actually from  
3 Mr. Prior's questioning of Ms. Carter. It is  
4 unusual for me to post something that is not my  
5 question to a witness, I'm going to post some that  
6 are my questions, but this was from Mr. Pryor.

7 Ms. Carter talked about how much she loves  
8 Southwest Airlines. And we didn't put it all on  
9 here. She also said, At Southwest Airlines, I  
10 didn't feel like a number.

11 Well, you know why? It's because of  
12 Southwest's culture she didn't feel like a number,  
13 because she was treated with respect. She loved her  
14 job, as she was repeatedly telling you, the jury in  
15 this case, and as she repeatedly told Southwest  
16 Airlines during the grievance process that led --  
17 that happened before.

18 "Oh, my gosh, it was the best company to  
19 work for."

20 You also heard from Mike Sims yesterday.  
21 You heard from Mr. Sims regarding the Step 2  
22 hearing, but you also saw him as, again, an  
23 additional embodiment of Southwest Airlines's  
24 culture. And I will talk about that in a second.

25 Again, he presided over the Step 2



1 hearing, which was essentially the appeal of the  
2 decision to terminate Ms. Carter's employment. And  
3 he made it clear during that Step 2 hearing that he  
4 absolutely agreed with the decision to terminate her  
5 employment. He agreed that she had violated  
6 Southwest policies and that the conduct was  
7 unacceptable.

8 But it was the first time during the whole  
9 process that Ms. Carter started to take some  
10 accountability, some responsibility for what she had  
11 done. She pleaded with him, Can I have my job back,  
12 because I do love my job and my company.

13 So Mr. Sims had a decision to make. And  
14 Mr. Sims, as you heard, thought that the right thing  
15 to do, the Southwest thing to do was to give  
16 Ms. Carter another chance.

17 And so he said, Okay, Ms. Carter, you want  
18 your job back; I'm going to give you your job back.  
19 And he offered her her job back.

20 This is a case where they want \$2 million  
21 to punish Southwest in a case where they gave her  
22 her job back, and she thumbed her nose at it. I'm  
23 sorry, that upsets me. We told her, come back.  
24 Let's let bygones be bygones. You can have your job  
25 back.

1 And I will tell you, to this moment, I  
2 don't understand why she didn't accept that. She  
3 should be flying on those airplanes working for the  
4 company that she says she loved. But she didn't do  
5 that, ladies and gentlemen, and I don't know why.

6 I know what she said.

7 Here is the last chance agreement.

8 She said that, well, she didn't like the  
9 fact that she wasn't going to get back pay.

10 But remember, when we went through her  
11 flight schedule, she was barely flying. She took  
12 more time for vacation in 2016 than in actual  
13 flights. I think she took three or four flights in  
14 2016 and none in 2017.

15 So the point here is that the notion that  
16 she wasn't going to get back pay, she wasn't  
17 sacrificing anything with respect to that.

18 Her termination was going to be reduced to  
19 a suspension. That was going to be time served.  
20 The date of this last chance agreement was after the  
21 30-day period. So that can't be an explanation as  
22 to why she didn't take the job.

23 She had to sign a settlement agreement.  
24 She was going to give up her rights.

25 Well, she was getting her job back. And

1 Mr. Sims testified that this was a standard part of  
2 these types of agreements. And it also, if you  
3 recall, Mr. Sims testified that had she signed this  
4 agreement, she was still free to pursue any claims  
5 she might have against the Union.

6 She was required to comply with company  
7 policies and procedures, like any other employee.

8 And then the final thing, the agreement  
9 would remain in her file for 24 months from the date  
10 that it was signed.

11 I asked her if -- well, there was some  
12 discussion about, well, the Collective Bargaining  
13 Agreement talks about 18 months. And I asked her,  
14 well, if it had been 18 months, would you have  
15 signed it? She said, oh, no.

16 So I don't know why she didn't sign that  
17 agreement. I don't know why she didn't accept the  
18 opportunity to go back to the company that she said  
19 that she loved.

20 What I do know is what I told you during  
21 opening statement regarding Southwest policies. She  
22 violated those policies by sending those videos to a  
23 co-employee.

24 I didn't like showing those videos to  
25 Ms. Stone. I didn't like showing them to you. I

1 felt like I had to so that you could understand why  
2 Southwest made the decision that it did. I felt  
3 like you needed to see it.

4 Southwest had every right to take the  
5 action that it did to protect its culture of respect  
6 and tolerance for co-employees, to enforce its  
7 policies that are designed to protect that culture.  
8 And that is what happened in this case.

9 And Ms. Carter disagrees with that. When  
10 I questioned her, her position was -- I asked her,  
11 Should Southwest have just ignored Ms. Stone's  
12 complaints? Is that your position?

13 And she said, yes. You should just ignore  
14 it.

15 Well, a couple of things. First of all,  
16 Southwest has these policies in place to protect its  
17 employees. It can't just ignore a complaint, and it  
18 is not inclined to do so.

19 Southwest has a duty to protect its  
20 employees, that is what those policies are about.

21 It is a commitment to its workforce that  
22 you don't have to be subjected to this kind of  
23 treatment.

24 And you can read the instructions. The  
25 messages, the videos, they are not protected

1 conduct. You are going to need to read the  
2 instructions and make that decision yourself.

3 But Southwest's position is while there  
4 certainly is some language in some of the messages  
5 that might be protected, the videos, sending videos  
6 of an aborted baby to a coworker is not protected  
7 activity under any law.

8 Now, Ms. Carter had explanations as to  
9 why -- well, first of all, she had what I would  
10 regard as excuses. Well, Ms. Stone, she didn't have  
11 to open the videos, she had to -- she had to click  
12 on those videos to watch them.

13 And she didn't maybe watch the whole  
14 video, or she didn't watch it at the airport but she  
15 watched it at the hotel.

16 None of that matters. Ms. Carter sent  
17 those videos to Ms. Stone. And let's be clear about  
18 it. Let's be clear about her motivation.

19 She didn't send those videos to Ms. Stone  
20 to try to convert her, to try to explain to her the  
21 horrors of abortion, to get the word out, as she  
22 said. She sent those videos to one person, Audrey  
23 Stone. She didn't send it other employees at  
24 Southwest Airlines; she sent it Audrey Stone,  
25 because she was mad. She was mad at Audrey Stone

1 because the Union had gone on this march, and she  
2 was upset about it, and she wanted to cause  
3 Ms. Stone the type of pain and suffering that you  
4 saw in the witness stand when she had to watch those  
5 videos for a second time.

6 She didn't want to create a dialogue with  
7 Ms. Stone about Ms. Stone's views on abortion.  
8 Ms. Stone had not responded to video -- or excuse  
9 me, to other messages over the course of the last  
10 three years. She didn't think by sending that  
11 video, Audrey Stone was all of a sudden going to  
12 pick up the phone and say, Hey, let's talk about the  
13 Union's position regarding abortion and women's  
14 rights. That wasn't going to happen, and she knew  
15 it.

16 She sent it to hurt Ms. Stone. And that  
17 is precisely what Southwest policies are designed to  
18 protect. Protect employees from images and messages  
19 like those videos of aborted babies.

20 And it is not protected conduct.

21 One of the good things about this trial  
22 coming to a close is that I will never have to say  
23 the words "pink pussy hat" again, but this was part  
24 of it too. This was improper under Southwest's  
25 policies.

1                   She sent this message to Ms. Stone as  
2 well. And, okay, there is some language in here  
3 about union activity, but the picture itself  
4 violates Southwest policies.

5                   And then when we -- when Ms. Carter had  
6 the opportunity to talk about it in her fact-finding  
7 meeting, she said -- there was some discussion about  
8 the -- what the hat looks like, and her position  
9 was, well, it's a vagina hat. It's no different  
10 than what I sent to her. They are talking about the  
11 pictures of the hats in the Women's March.

12                  But of course it is different. It looks  
13 nothing like the hats that these women wore.

14                  I also told you during opening that  
15 Ms. Carter was not terminated because of her  
16 religious beliefs, and we believe the evidence  
17 manifests that completely.

18                  First and foremost, the people who made  
19 the decision to terminate her employment, first,  
20 Mr. Schneider, and then he consulted with Ms. Emlet,  
21 the labor relations manager, and then Mr. Sims who,  
22 again, offered her her position back, but  
23 nonetheless, subject to the last chance agreement,  
24 all of these folks are Christian, and moreover, they  
25 are all pro life.

1                   In Ms. Carter's counsel's opening  
2 statement, it was suggested, at least to me, I heard  
3 that you were going to see in the course of this  
4 case photographs of Southwest flight attendants at  
5 this Women's March carrying signs and maybe in  
6 Southwest flight attendant uniforms saying "I'm pro  
7 choice."

8                   We didn't see any of that. What we saw --  
9 their picture was better than mine -- but we saw one  
10 photograph posted on the Union's website of someone  
11 holding what appears to be a cardboard sign that in  
12 one of three blocks talks about "my body, my  
13 choice."

14                  And the suggestion is that, well,  
15 Southwest disciplined Ms. Carter for expressing her  
16 religious views, but Southwest didn't discipline the  
17 attendees at the Women's March for expressing, I  
18 guess, their religious views.

19                  But that's not comparable. These women  
20 were participating in a women's march, not a  
21 pro-choice march.

22                  But even apart from that, we don't know  
23 whose sign this is. We don't know that -- you can't  
24 even tell who is holding it. There is no evidence  
25 before you that this was a Southwest employee that



1 Southwest could have investigated and disciplined  
2 had it -- if it chose to.

3 And moreover, the speech is not the same  
4 as the videos that Ms. Carter sent to Ms. Stone.

5 So you will be asked, in Jury Question 10,  
6 did Southwest unlawfully discriminate against  
7 Ms. Carter by discharging her based on her religious  
8 views, and the answer is an emphatic no. Southwest  
9 did not.

10 There was also discussion of Ms. Carter's  
11 claim for religious accommodation. Again, she never  
12 asked for an accommodation. Southwest had no reason  
13 to know what accommodation she was requesting, even  
14 in this case.

15 What is the accommodation that she's  
16 requesting? I'm not even sure I know. I guess the  
17 only thing it could be is that Southwest shouldn't  
18 apply its policies to her.

19 But that is -- if you look at the law and  
20 the instructions, that is not something that an  
21 employer is required to do, to just suspend its  
22 policies and allow Ms. Carter to send messages and  
23 videos like she did, apparently to anyone in  
24 Southwest's workforce. She sent them to Ms. Stone,  
25 but why couldn't she send them to anyone else? That

1 is not what the law requires.

2 So as to Question 11, has Carter proved  
3 that Defendant Southwest failed to accommodate her;  
4 again, the answer is an emphatic no.

5 The other thing I told you was that Carter  
6 was not terminated because she opposed the Union.

7 We don't dispute that she had a beef with  
8 the Union, Southwest does not dispute that, that it  
9 was long-running and that she had disagreed with how  
10 the Union spent its members' dues, that she  
11 supported this recall effort, and that she generally  
12 opposed Southwest's union leadership.

13 Southwest didn't know any of this until  
14 Ms. Stone's complaint. Mr. Schneider had barely  
15 met, I don't think -- had spoke to her on one  
16 occasion, Ms. Stone. Southwest didn't have any  
17 particular allegiance to the incumbent Union  
18 leadership, particularly not the people who were  
19 involved in the decision to terminate Ms. Carter's  
20 employment.

21 Mr. Schneider, Mr. Sims, Ms. Emlet, none  
22 of those folks are on all of these emails back in  
23 2013 that they want to show you from Union members  
24 that complain about other employees' social media  
25 activity from, again, from back in 2013, that

1 doesn't involve Ms. Carter, and certainly doesn't  
2 involve any of the decision-makers in this case.

3 I'm not sure what connection, maybe those  
4 claims are -- maybe that evidence is relevant more  
5 to the Union's claims than to Southwest, but I can't  
6 connect the dots, and I think the reason is that  
7 there is just no way to connect them to support the  
8 notion that these -- that Mr. Schneider, who you  
9 heard from, that Ms. Emlet who you heard from, would  
10 in any way be motivated by Carter's opposition to  
11 the Union in reaching the decision to terminate her.

12 If you look at the termination letter, I  
13 believe it's Exhibit 41, I mean, it's very clear why  
14 she was terminated. And if you hear the testimony,  
15 it's very clear why she was terminated. She was  
16 terminated first and foremost because she sent those  
17 videos to Ms. Stone.

18 And they want to talk about, well,  
19 Ms. Stone is a president. She's the president of  
20 the Union. She had a right to do that.

21 Well, I told you in opening statement,  
22 Ms. Stone was also an employee of Southwest  
23 Airlines, every bit entitled to the protection of  
24 those policies that I showed you as any other  
25 employee, including Ms. Carter.

1 Southwest couldn't just say, Oh, sorry,  
2 Ms. Stone. I see here that you are the Union  
3 president as well as an employee. We are not going  
4 to apply our policies to you.

5 That is not the way it works, ladies and  
6 gentlemen.

7 I asked -- they talked about Ms. Lacore,  
8 Sonya Lacore, who was on some of these emails, the  
9 senior Southwest executive, and that is true.

10 And I asked her -- I think I asked her two  
11 questions during her testimony. And the big one was  
12 you know, okay, you were on these emails from these  
13 other employees in 2013. Did you have anything to  
14 do with Ms. Carter's termination.

15 And her answer was no.

16 So that is a complete red herring. It is  
17 completely irrelevant. And what they have not done  
18 is shown any evidence whatsoever to suggest that the  
19 decision-makers in this case, Mr. Schneider,  
20 Ms. Emlet or Mr. Sims, had any motivation associated  
21 with her oppositional activity.

22 So the answer with respect to Southwest  
23 Airlines in Question 8 is again a resounding and  
24 emphatic no. Southwest did not retaliate against  
25 Ms. Carter for engaging in activity protected by the

1 RLA.

2 And Ms. Carter has all along -- this is  
3 just a snippet and an example of what her position  
4 has been all along, that this was union business.

5 Remember the analogy that she made that,  
6 you know, if I -- rather than send this out on  
7 social media and violate Southwest's social media  
8 policy, if I had just gone to the Union offices and  
9 made these complaints, none of this -- none of this  
10 would happen.

11 She says here, "It had nothing to do with  
12 Southwest until Ms. Stone made a complaint to  
13 Southwest, is that fair? Correct?"

14 She responds, "And then Southwest Airlines  
15 got into Union business."

16 Well, we got into union business because  
17 we had to. We had a complaint from an employee and  
18 we were obligated under our policies to respond to  
19 that complaint, to investigate that complaint and to  
20 respond to that complaint, and that is what  
21 Southwest Airlines did.

22 The fourth thing I told you during opening  
23 was that Southwest conducted a fair and thorough  
24 investigation. And the evidence confirmed that.  
25 This was a three-week process led by Mr. Schneider.

1 It involved others. It wasn't just one person. It  
2 involved Ms. Emlet, Ms. Jones, who you have heard  
3 from, Ms. Gutierrez, and then Mr. Sims.

4 Carter was represented by the Union during  
5 the process. There was a fact-finding meeting and  
6 then the Step 2 grievance hearing that Mr. Sims  
7 presided over.

8 And both of those meetings gave Ms. Carter  
9 the opportunity to be heard, to tell her side of the  
10 story.

11 And as I indicated, at the second meeting,  
12 the Step 2 hearing, she not only acknowledged -- I  
13 asked her, "Would you agree with me that he was  
14 fair?" Talking about Mr. Sims. "He was fair to you  
15 during the hearing, was he not?"

16 And her response was, "They were all fair  
17 to me." Mr. Sims and everyone at Southwest was fair  
18 to her.

19 And he gave her a chance to tell her story  
20 during the second -- during the Step 2 hearing.

21 So there is no question about the fairness  
22 of the process. It's a process that is borne of  
23 Southwest's policies, as well as the Collective  
24 Bargaining Agreement. It gave Ms. Carter the chance  
25 to be represented and the chance to be heard in

1 connection with this.

2 And, again, I come back to this to close  
3 out. But at the Step 2 hearing, she acknowledged,  
4 you know what, I could have made a better choice  
5 regarding Audrey. I shouldn't have sent those  
6 videos.

7 And later on she's asked, "Will you  
8 promise not to send them again?"

9 And she says, "Yes, I promise not to send  
10 them again."

11 This is Exhibit 119. You can go back and  
12 look at those pages.

13 She said, "I'm not going to send those  
14 types of video again."

15 Because at that point she recognized --  
16 either she recognized that what she had done was  
17 wrong and that it violated Southwest's policies, or  
18 that she just wanted her job back, because she also  
19 said that during the meeting.

20 "QUESTION: That was your goal at the Step  
21 2 hearing, it was to get your job back?

22 "ANSWER: Yes, sir."

23 It has been a privilege to be able to try  
24 this case. It's what I enjoy doing. I suspect I  
25 have maybe enjoyed it more than you guys have

1 sitting in the jury box for the last seven days.

2 But what is frustrating at some level is  
3 the reality is that we should never be here. We  
4 wouldn't be here if Ms. Carter had done the right  
5 thing and signed that last chance agreement and  
6 accepted that offer of reinstatement.

7 She could be flying on those planes,  
8 working for the company that she has repeatedly told  
9 you and that she repeatedly told Southwest Airlines  
10 that she loved.

11 She didn't do it. I don't know why. But  
12 I do appreciate your service and I appreciate your  
13 time and your attentiveness. Thank you on behalf of  
14 Southwest Airlines.

15 THE COURT: Thank you, Mr. McKeeby.

16 Okay. Quick sidebar.

17 (Thereupon, the following proceedings were  
18 had at sidebar:)

19 THE COURT: Anything we need to bring up?

20 MR. PRYOR: He misstated the evidence  
21 numerous times, but it's nothing your instruction  
22 can't cure.

23 THE COURT: Anything you want to bring up?

24 Let me ask y'all, if we can wrap up by  
25 around 12:30, I think we'd all have a sense of



1 relief.

2 MR. PRYOR: I only have seven minutes.

3 THE COURT: I give you eight because my  
4 check of the testimony was that there is evidence  
5 that Rocky Mountain is Mike Hafner. So if you want  
6 a minute, you got a minute.

7 So how long, Mr. Greenfield, do you think  
8 you're going to be?

9 MR. GREENFIELD: 30, 45 minutes, I think.  
10 I'm a little tired, so I might be talking slowly.

11 THE COURT: That's fine. How about let's  
12 go for it. I sense the jury wants the case. And we  
13 can certainly break for lunch; I don't want them to  
14 be mad at us and take it out on us.

15 So are you ready?

16 MR. GREENFIELD: Sure, yes.

17 (Thereupon, the sidebar was concluded and  
18 the following proceedings were held in open  
19 court:)

20 THE COURT: Okay. Folks, with your  
21 indulgence, we are going to try to go for it and see  
22 if we can add Mr. Greenfield's close on behalf of  
23 the Union, and have the last word from Mr. Pryor.  
24 We will break for lunch, and then it is all you. So  
25 let's try to give you the case.

1                   So, Mr. Greenfield, I'm going to ask if  
2                   you can go head and close on behalf of the Union.

3                   MR. GREENFIELD: Yes, your Honor.

4                   Good afternoon, everyone. I would like to  
5                   thank you all. It's been a long week. It's been a  
6                   long week for all of us, I think.

7                   But you are here doing your civic duty.  
8                   Everyone deserves their day in court. Ms. Carter  
9                   has received that and she's been heard.

10                  Proudly represent TWU Local 556, with  
11                  co-counsel Edward Cloutman, III, and our corporate  
12                  representative, Michael Massoni. We do want to  
13                  thank you for your service today.

14                  Before I get too far into things, I want  
15                  to just directly address what Ms. Carter's counsel  
16                  presented to you during his closing argument.

17                  It was a partial picture. Bits and  
18                  pieces, dates from 2013, emails from 2015, comments  
19                  from 2017. Why? Why would someone do that?

20                  It is to promote conspiracy. That is what  
21                  you have to believe for Ms. Carter's claims to be  
22                  true here.

23                  So let's walk through that conspiracy.  
24                  Ms. Carter believes she was discriminated against  
25                  and retaliated against when Audrey Stone turned her

1 in to the company for sending her videos of aborted  
2 fetuses.

3 Okay?

4 Now, let's follow that conspiracy trail  
5 down the line.

6 That goes to Southwest Airlines. As part  
7 of the collectively bargained agreement between the  
8 parties, Ms. Carter gets to have a fact-finding  
9 meeting. And at that fact-finding meeting, the  
10 Union, the one she is suing, provides her  
11 representation. We even let Ms. Carter pick whoever  
12 she wants to represent her at the meeting.

13 So, of course, she feels it was done well.  
14 She said Mr. Chris Sullivan was amazing in her  
15 representation.

16 Okay.

17 At that point, Southwest Airlines makes  
18 the decision to terminate her, fire her. As part of  
19 the collectively bargained agreement, Ms. Carter  
20 gets another bite at the apple. She gets a Step 2  
21 hearing.

22 Again, the Union steps in and represents  
23 her vigorously to get her job back.

24 You heard what Mr. McKeeby said. You saw  
25 the evidence. Ms. Carter thought it was fair. You

1 heard Mr. Sims on the stand. He said Beth Ross and  
2 Becky Parker from the Union did a fantastic job  
3 representing Ms. Carter.

4 So good of a job, that they got her her  
5 job back. Thirty-day suspension, time served.

6 So now let's follow that conspiracy.

7 Now, Ms. Stone had to have known that she  
8 was going to turn Ms. Carter in, she was going to  
9 get her fired, but then the Union was going to get  
10 her job back.

11 But then Ms. Carter was going to deny  
12 that. So this whole thing was to get her fired, but  
13 we got her her job back and she got another bite at  
14 the apple. She kept going.

15 Now, Mr. McKeeby asked you a question --  
16 or he presented a question. He wanted to know why.

17 Why would she not take her job back? She  
18 said it is because of the probationary period, that  
19 24-month probationary period.

20 And what did I tell you at the very  
21 beginning of this trial? Ms. Carter wants to be  
22 able to say whatever she wants, however she wants,  
23 in whatever manner she wants.

24 And she knew she had crossed the line.  
25 And she knew if she continued doing what she was

1 doing, she would be fired again. She wanted to be  
2 able to say whatever she wanted to.

3 Let's touch back on a couple of other  
4 pieces of evidence that counsel brought up.

5 They have thrown lots of emails in front  
6 of you from a gentleman named Brian Talburt. Who is  
7 Brian Talburt? He is not a union executive board  
8 member. He's not a union agent. He's not a shop  
9 steward. Just a member of the union.

10 And you know what, Mr. Talburt probably  
11 had a little bit of verbal diarrhea. He wouldn't  
12 stop emailing people. He wouldn't stop calling  
13 people. You heard from Ms. Stone that she had to  
14 ignore him. Do you see many -- any responses from  
15 Audrey Stone to Brian Talburt? No.

16 What did you hear from Ms. Stone? That  
17 she gets hundreds of emails a day. Hundreds.

18 What did you hear from Ms. Lacore, who  
19 they attach on those emails? Ms. Lacore testified  
20 that she had to block Brian Talburt's number from  
21 her phone. Partial pictures.

22 There is an old saying that I know of,  
23 just because you are paranoid, doesn't mean they are  
24 not after you. Right?

25 Now, Brian Talburt is the bogey man. Look

1 at the two emails that they put up to present before  
2 you. Look who he was turning in. He was turning in  
3 a woman named Jeanna Jackson.

4 How do we know that name? How do we know  
5 the name Jeanna Jackson? Jeanna Jackson started and  
6 pushed forward the recall petition that tried to  
7 throw out the entire executive board office in 2015.

8 Audrey Stone and everybody but three  
9 people: Donna Keith, John DiPippa, and Jessica  
10 Parker.

11 Why are those three people important?  
12 They weren't named in the recall petition. They  
13 opposed the first tentative agreement that Ms. Stone  
14 had negotiated. That is exactly what Ms. Carter was  
15 doing.

16 But Ms. Carter got up on the stand and  
17 told you that the findings that those three people  
18 had when they reviewed the recall petition was a  
19 fraud. But what was the real fraud? Exhibit 134.  
20 Look for it.

21 Look through it. This is what -- this is  
22 what Ms. Carter supported, this is what Jeanna  
23 Jackson supported. This is what Brian Talburt had  
24 issue with.

25 You know what was on the recall petition

1 that was turned in by Jeanna Jackson? Signatures of  
2 dead people. Whited-out names. Changed names.  
3 Names with the same penmanship. Down the line.  
4 Changed dates.

5 That is where the fraud is.

6 Another one, C. Click. Who is C. Click?  
7 Where do we know that name? That is Chris Click.

8 Chris Click was thrown out of office in  
9 2013, along with Stacy Martin and Jerry Lindemann.

10 Ms. Carter tells you that that is a coupe,  
11 that they threw everybody out. That is because  
12 facts don't matter to Ms. Carter.

13 What do we know for a fact? And she  
14 testified that she knew about it, that there is  
15 judgment against Stacy Martin for misappropriating  
16 funds and stealing from the Union to the tune of  
17 \$17,000. A judge and a jury in a courtroom just  
18 like this found him guilty of those charges.

19 But it is a coupe. We should just trust  
20 Charlene Carter. Just ignore the facts.

21 So we talked about the whatever. We  
22 talked the whenever. And we talked about the  
23 however. But it is more than just that, this case.

24 The plaintiff believes that special rules  
25 should be enforced on her behalf, rules that limit

1 the rights of other employees so that hers can  
2 expand without restriction.

3 What do I mean by that?

4 The plaintiff beliefs that Audrey Stone  
5 should have known that no matter what message the  
6 plaintiff sent, no matter how traumatic or  
7 disturbing, that Ms. Stone was never allowed to  
8 report it to Southwest Airlines.

9 That is what she said.

10 She could say anything to Ms. Stone, the  
11 president. She could say anything. As long as it  
12 was tied to her religious beliefs, as long as it was  
13 tied to her anti-union sentiment. Which is not in  
14 dispute. It is not.

15 She was an objector since 2013. She had  
16 been objecting to the Stone administration the  
17 entire time she was there. I will come back to  
18 that.

19 According to plaintiff, a right to say  
20 whatever, whenever, and however should extend to the  
21 point of completely eliminating Ms. Stone's rights  
22 to be free from traumatic harassment at work.

23 We have -- we have combating rights,  
24 combating rights in the workplace, and that is what  
25 you are going to decide today.



1           The plaintiff believes that once the  
2 graphic video she sent had become the subject of a  
3 coworker complaint, Southwest Airlines then should  
4 have known that they were supposed to ignore  
5 Ms. Stone's complaint, ignore their duty to  
6 investigate. That is what they are presenting to  
7 you.

8           Why? Because Charlene Carter believes her  
9 rights are more important than other employees',  
10 more important than Ms. Stone's to be free from  
11 harassment.

12           Ultimately, according to the plaintiff,  
13 even if Ms. Stone complained of the graphic videos,  
14 like she should have known not to, and even if  
15 Southwest Airlines didn't ignore the complaint, like  
16 she thought they were supposed to, Southwest  
17 Airlines should not be allowed to discipline her for  
18 any speech that she defines as expression of her  
19 Christian faith or in dissent of the Union. No  
20 restrictions. That is what she's told you.

21           Ladies and gentlemen of the jury, make no  
22 mistake, Ms. Carter has no claims to First Amendment  
23 speech in this case. We are not dealing with  
24 government regulation. This is -- this is  
25 different. We are dealing with speech in the

1 workplace. Southwest Airlines has the right to  
2 govern their workplace with policies and procedures  
3 to create that culture that you heard so much about.

4 That is capitalism. That is what this  
5 country is about. They have that right. How you  
6 speak to folks in the workplace matters. It does.  
7 What you say to them, or about them, it matters.  
8 How you say it matters.

9 Now, I told you about these conflicting  
10 employee rights. This case is about employee rights  
11 in the workplace and how those rights intersect, how  
12 they must be balanced. Unfortunately, plaintiff's  
13 approach to this balance is to cyber bully her way  
14 past any lines of decency. That is what Ms. Carter  
15 is, a cyber bully.

16 And then when her targeted harassment  
17 results in consequence, she claims conspiracy. They  
18 are all out to get me.

19 Ms. Carter is a cyber bully who expresses  
20 no remorse, except for when it suits her. You heard  
21 her when she was on the stand yesterday. She wasn't  
22 sad. She wasn't remorseful about what she said to  
23 Audrey Stone. She was sad at the results, that we  
24 were here, that all of this was going on.

25 Now, when she's trying to get her job

1 back, when she thought that was available, you heard  
2 the testimony that Mr. McKeeby presented, that is  
3 when she showed contrition.

4 Now, social media might be the downfall of  
5 us all. I really believe this. Social media like  
6 Facebook, though, has become the new water cooler.  
7 And industries like the airlines, where flight  
8 attendants don't have a home office, they are  
9 traveling on planes, they are staying in hotels and  
10 so where do they gather? They gather at the water  
11 cooler on Facebook.

12 And, man, I will tell you what, they were  
13 fighting like mean girls trying to make the drill  
14 team. You heard Ms. Jones take the stand. Hundreds  
15 of social media violations. This isn't just about  
16 Ms. Carter. The flight attendants were going after  
17 each other, all over the place.

18 She's not special.

19 But one of the problems with the digital  
20 water cooler is we don't see how our speech affects  
21 folks. Those visual cues of body language and  
22 emotional responses, they are absent. We don't get  
23 to see that. We don't have to deal with how bad it  
24 feels to say something hurtful to someone's face, or  
25 hurt someone's feelings, or even traumatize them.

1 You don't have to deal with that, so you feel like  
2 you can say whatever you want.

3 But the effect on the reader or the effect  
4 on the listener is the same. The person on the  
5 end -- the other end of the cyberbullying, the pain  
6 is felt in real life. Not just Facebook.

7 Ms. Carter -- Ms. Carter experienced an  
8 abortion firsthand. Something I would hope no one  
9 has to go through. She suffered, after seeing her  
10 aborted fetus in a jar. And her experience, it  
11 haunted her.

12 Ms. Carter experienced pain. But in that  
13 pain, according to Ms. Carter, she also found  
14 rebirth. She found a new path. Ms. Carter knew the  
15 videos she sent to Audrey Stone were graphic. She  
16 wanted Ms. Stone to see what she saw.

17 She wanted Ms. Stone to feel that same  
18 pain she did. Why?

19 Well, Mr. Pryor will tell you, because it  
20 was effective. It was an effective way to convince  
21 somebody that they were wrong. Make them feel pain.

22 But in the workplace, that is harassment.  
23 Those videos that Ms. Carter sent Ms. Stone are not  
24 protected speech. They are intended to cause pain,  
25 they are intended to harass.

1 All right. We have this long jury charge  
2 that has been presented to us that we all worked  
3 very hard on, so I apologize for it being about 60  
4 pages, because I did play a part in making it that  
5 long.

6 I want to walk through some of the key  
7 points in that jury charge, okay? Before we dive  
8 into the specific claims and the elements because I  
9 want to give you tidbits, I want to give you some  
10 key evidence to consider while you are looking at  
11 that charge.

12 But I want to start with jury question  
13 No. 1. It asks about Local 556 and their liability.  
14 And it asks, Has Plaintiff Carter proved that Audrey  
15 Stone was acting in her official capacity as then  
16 president of Local 556 when she reported Plaintiff  
17 Carter to Defendant Southwest Airlines?

18 Ms. Stone was an employee of Southwest  
19 Airlines, first and foremost. That never stops.  
20 You heard witness after witness, Ms. Stone didn't  
21 sign something relinquishing her rights as an  
22 employee when she became union president. You heard  
23 every Southwest management person come up there and  
24 say No, she retains her rights, she's an employee of  
25 Southwest Airlines, she's a flight attendant who

1 also happens to be the Union president.

2 Now, if you believe that Ms. Stone's  
3 intentions were true, and you believe she was really  
4 offended and that those tears on the stand weren't  
5 fake, that she doesn't have some ability to just  
6 magically turn on the water spigot, that she felt  
7 threatened in the workplace, and she made her  
8 complaints as an employee. As an employee.

9 The Union president can't make -- the  
10 Union can't come and say, "I'm being harassed." Who  
11 can make that complaint? An employee can. And she  
12 made it as an employee.

13 But let's dig deeper, and let's look at  
14 how Ms. Stone made her complaint to Southwest  
15 Airlines and those mechanisms.

16 Can you pull up Exhibit 66?

17 We pulled up Ms. Stone and the complaint  
18 she made to her base manager, Suzanne Stephenson.  
19 You heard throughout the process that if someone has  
20 a complaint, where do they take it in? Where does  
21 an employee take their complaint? To the base  
22 manager.

23 That is what Ms. Stone did. Standard  
24 employee protocol.

25 And she informed her base manager,

1 Ms. Stephenson, that -- and if we look into the  
2 middle paragraph here -- it says, "While I hold."

3 "While I hold a current position with my  
4 Union, I'm a Southwest employee first and foremost."

5 And if you can scroll all the way down to  
6 the very bottom, Ms. Stone signs the agreement --  
7 all the way down. Ms. Stone signs the agreement.  
8 Audrey Stone, number 74952.

9 That is her employee number.

10 Now, Ms. Stone was also called into a  
11 fact-finding meeting by Southwest Airlines, just  
12 like all other employees.

13 That meeting took place at the Denver  
14 in-flight base because that is where Charlene was  
15 based, in Denver.

16 The Union wasn't -- the meeting wasn't set  
17 as a special place because she was the Union  
18 president. It didn't take place at the union hall.  
19 The meeting didn't place at Southwest headquarters.  
20 No. Just like every other employee, it took place  
21 in the base of where you were making the complaint.

22 And what was the company investigating?  
23 Harassment and retaliation. Those are employee  
24 rights. That is what she was complaining of, a  
25 violation of her employee rights.

1 Now, let's keep digging a little bit  
2 deeper. Let's look at how Ms. Carter communicated  
3 with Stone, the messages we are talking about.

4 Can you pull up Exhibit 65 for me?

5 Charlene Carter sent her messages through  
6 Instant Messenger to the account of Audrey Stone,  
7 personal Facebook page, Audrey Stone. We are  
8 looking at it right here. Period.

9 Ms. Carter wants to tell you that she sent  
10 it to Audrey Stone TWU. Should we just trust  
11 Ms. Carter? Or should we trust the evidence that  
12 Ms. Carter submitted? These are her documents.

13 If can you pull up Exhibit 103, page 1.

14 All right. Here we have -- this is the  
15 information that Charlene brought into the meeting  
16 to present to us showing the Union is one-sided and  
17 don't share her beliefs.

18 If you can scroll down to page 32.

19 Same deal. Here is the hat picture. Who  
20 is it sent to? Audrey Stone, to her private,  
21 personal Facebook page.

22 All right. Now we also know that  
23 Ms. Stone had a union president email address during  
24 her tenure, astone@twu556.org. She usually attached  
25 it to the end of her communications, to the end of



1 her publications. And we have seen some of those  
2 throughout the trial.

3 Ms. Carter told you she didn't have that  
4 email address. I don't find that credible.

5 She said she had emailed her about other  
6 things. But not this, not these aborted fetuses.  
7 She didn't send this to the Union office.

8 Both sides of the communications that we  
9 are looking at show that neither the harassment, nor  
10 the subsequent actions of Ms. Stone, were done in  
11 her official capacity. You do not give up your  
12 rights as an employee, you do not give up your  
13 rights to be free from harassment in the workplace  
14 because you are a union president.

15 Now, let's turn to some key language in  
16 the claims that affect the Union.

17 The first claim that Ms. Stone -- that  
18 Ms. Carter has against the Union is a duty of fair  
19 representation claims, and what does that mean? In  
20 the charge, it says that, "Plaintiff Charlene Carter  
21 claims that Defendant Local 556 violated the duty of  
22 fair representation owed to her under the Railway  
23 Labor Act when former Local 556 Union President,  
24 Audrey Stone, reported Plaintiff Carter to Defendant  
25 Southwest."

1                   That is what she's saying is the breach,  
2                   turning her in. That is it. She believes that  
3                   under no circumstances could Ms. Stone turn her in  
4                   to the company. You heard her, wouldn't have  
5                   mattered what she said, as long it was tied to her  
6                   anti-union sentiment.

7                   That, agreed, protected. She did that.  
8                   She did it for years. No repercussion, no  
9                   complaints. Only one complaint, after she sent a  
10                  video of aborted fetuses; just one.

11                  Now, if we look down to the standard of  
12                  proof, it says, "A union violates their duty of fair  
13                  representation when it takes action that is  
14                  arbitrary, discriminatory, or in bad faith."

15                  Let's look at arbitrary. There is nothing  
16                  arbitrary here. It is more likely than not that  
17                  Ms. Stone truly labored over the decision to report  
18                  Ms. Carter. It is something she stewed on. She  
19                  went back and forth. It wasn't an arbitrary  
20                  decision to turn her in.

21                  Can you pull up Exhibit 67, please?

22                  If we scroll down to the middle of the  
23                  page, it says, "Suzanne, part of my message was cut.  
24                  It should have said, 'I'm personally pro life, but I  
25                  support others' right to pro choice and don't

1 believe I have the right to tell them what to do  
2 with their body.' And to be sent messages that  
3 reference me as a murderer couldn't be further than  
4 the truth. My apologies. I have edited and cut and  
5 pasted and agonized for days."

6           There is nothing arbitrary about this  
7 decision.

8           Let's look at bad faith.

9           There is no bad faith here. It is more  
10 likely than not that the videos Ms. Carter sent to  
11 Ms. Stone actually traumatized her. You saw  
12 Ms. Stone on the stand. Those weren't crocodile  
13 tears, those were real tears.

14           Ms. Stone had the courage to get up on  
15 that stand and tell you why aborted fetus videos  
16 affected her so much.

17           Let's remember the testimony. Ms. Stone  
18 worked at a clinic for at-risk youth. While she was  
19 working there, she had to advise two young women on  
20 their birth rights and what they should do with  
21 those babies and those women were a product of  
22 incestuous rape.

23           And Ms. Stone cried her eyes out because  
24 she told you she is pro life, she wanted to do  
25 everything she could for people to be able to keep

1 their babies. But she knew at that point that she  
2 didn't feel comfortable telling those women what  
3 they should do with it.

4 So that is what Ms. Stone means when  
5 she's -- says she's personally pro life, politically  
6 pro choice. That was her experience.

7 Again, not saying right or wrong on  
8 however you want to feel on that. That is just  
9 Ms. Stone's experience.

10 So is it more likely than not that she  
11 made this in bad faith or because it really did  
12 traumatize her because of her past experiences?

13 We all carry that around with us, we all  
14 carry around our past trauma and past experiences,  
15 and it affects us differently.

16 Third prong, discriminatory. Again,  
17 nothing here. It is more likely than not that  
18 Ms. Carter was not treated differently. Plaintiffs  
19 have offered nobody to compare her to. And  
20 certainly nobody else sent Ms. Stone videos of  
21 aborted fetuses and was not reported to the company.

22 It is more likely than not that Audrey  
23 Stone did not act arbitrarily, in bad faith or  
24 discriminatorily when she made the decision to  
25 report Charlene Carter.

1                   So you will see that question on page 29,  
2 right here, Question 2. We ask you to answer no to  
3 that question.

4                   Let's move on to the next claim, the  
5 Railway Labor Act Retaliation.

6                   I'm on page 12. And it says, "Plaintiff  
7 Carter also claims that Defendant Local 556  
8 retaliated against her by attempting to discipline  
9 her for engaging in union opposition and  
10 organizational activity protected by Section 152,  
11 Third and Fourth."

12                  And then there are some paragraphs in  
13 there talking about it. And it makes my eyes glaze  
14 over and bleed a little bit, so I'll make that part  
15 easy for you in regard to us.

16                  There is no dispute that Ms. Carter  
17 engaged in union opposition for years. But that is  
18 the point. Since 2013, she's been an objector of  
19 the Union. 2015, she opposed the tentative  
20 agreement on the first contract.

21                  She was a vocal recall supporter. She  
22 sent Audrey Stone hundreds of messages that we all  
23 agreed were just union dissent. And at no point was  
24 she ever turned in. By anybody.

25                  She wasn't turned into the company until

1 she crossed the line.

2 All right. And we are going to work  
3 backwards a little bit. Because the Union has what  
4 is called an affirmative defense. Which means if we  
5 can prove that then President Stone would have  
6 reported Plaintiff Carter to Southwest Airlines,  
7 even if Plaintiff Carter had not engaged in activity  
8 protected by the RLA statutes that you have been  
9 provided, that we are not liable. I'm going to show  
10 you a question that I want you to answer "no" to on  
11 that.

12 So what does that mean? We believe that  
13 the aborted fetus videos, in and of themselves, are  
14 not, by definition, religious, nor do they contain  
15 protected union dissenting speech. The video  
16 themselves are simply videos of aborted fetuses,  
17 okay?

18 It gets mixed in with language, and that  
19 is what matters. If Ms. Stone would have received  
20 the harassing videos with no protected commentary by  
21 Ms. Carter, she still would have turned her in. If  
22 there was no language with the videos, she would  
23 have got the videos, she would have watched them,  
24 she still would have been harassed, she still would  
25 have felt pain, she still would have turned them in.

1 Can you pull up Exhibit 89?

2 And these are the notes from the  
3 fact-finding meeting. And if we scroll down to  
4 page 2, we can look in here, in the bottom part  
5 here, and it says, "I went on Facebook to check, and  
6 there was a message from her." Referring to  
7 Charlene Carter.

8 "I opened the message. And it had a video  
9 that I couldn't look at because I was in Denver  
10 airport. I read the text. I read the text and I  
11 closed it out."

12 At no point after that does Ms. Stone  
13 express that she was traumatized or that she was  
14 reporting someone. Because what is in that message?

15 You can scroll down on 89. Let's look at  
16 that message. Continue down, it will be underneath  
17 the notes.

18 I apologize. Pull up Exhibit 66. I get  
19 them -- they are very similar documents.

20 If you can go down to the messages below  
21 that. There it is. This is what we are looking at.  
22 Here is the text that she read.

23 "This is what you supported during your  
24 paid leave with others at the Women's March in DC."

25 Right? There is your anti-union speech,

1 protected.

2 "You truly are despicable in so many  
3 ways."

4 Not nice, but not illegal.

5 "By the way, the recall is going to  
6 happen." More union-protected speech, dissent.

7 "And you are limited in the days you will  
8 be living off all the SWA FAs." Southwest Airlines'  
9 Flight Attendants.

10 "Can't wait to see you back on line."

11 She didn't report her at that point.

12 The text discusses the Women's March. The  
13 text discusses the recall petition. It mentions  
14 abortion is murder. We have the trifecta, right?  
15 We have some religious speech, we have some  
16 anti-union speech. The text itself is kind of  
17 nasty. That is what I'm talking about when I say  
18 Ms. Carter is a cyber bully.

19 Just because it is protected speech,  
20 doesn't mean it is nice. It doesn't mean it is a  
21 respectful way to talk to your coworkers.

22 And on that issue, is Question 4. That  
23 is, do you find that the Defendant Local 556 has  
24 proved that Local 556 would have reported Plaintiff  
25 Carter to Defendant Southwest even between Plaintiff



1 Carter had not engaged in activity protected by the  
2 Railway Labor Act?

3 Yes. We have. He read the text. That is  
4 not where the outrage lies. The outrage lies in  
5 videos of aborted fetuses. It was meant to harm  
6 her, it was meant to harass her, it was meant to  
7 cause pain. That is not protected.

8 All right. So now we are going to look --  
9 we are going to work back into the Railway Labor Act  
10 now that we have talked about our affirmative  
11 defense. I believe we do meet that.

12 But just in case, let's go back. The  
13 plaintiff must prove, in regard to this claim,  
14 beyond a preponderance of the evidence, that  
15 Ms. Stone reported Plaintiff Carter in Stone's  
16 official capacity as president of Local 556.

17 But we have already covered that. So I'm  
18 not going to beat you over the head again with my  
19 argument, even though I think it is great.

20 If you agree that she did act in her  
21 official capacity, you go straight to Question No. 3  
22 and you answer no. Move on. That is it.

23 If wasn't made in official capacity, you  
24 are done with that one.

25 All right.

1 Back to the top.

2 Again, we go back to that element No. 1,  
3 "That Plaintiff Carter engaged in activity that is  
4 protected by Section 152." We don't dispute that.  
5 I don't think anyone in the room disputes that  
6 Ms. Carter had union opposition.

7 No. 2. "Plaintiff must prove, beyond a  
8 preponderance of the evidence, that former Local 556  
9 President Stone reported Plaintiff Carter to  
10 Defendant for discipline."

11 Well, turning somebody in, it seems pretty  
12 natural that it would be for discipline. But they  
13 have to prove beyond a preponderance of the evidence  
14 that is what it was for.

15 Let's pull up the Exhibit 89, page 4 at  
16 the top.

17 DG, I believe is Denise Gutierrez, who you  
18 heard from, "What do you want Southwest to do?"

19 Audrey Stone responds, "Make Charlene and  
20 Chris Click stop." She doesn't ask for anyone to be  
21 terminated. She doesn't ask for anyone to be  
22 disciplined. She asks for intervention for help to  
23 be free from harassment.

24 What Southwest does with that report, that  
25 is up to them. That is their decision.

1                   You can pull that down.

2                   So if you agree with that interpretation,  
3 you turn to Question 3 on page 30, and again, you  
4 answer "no."

5                   Then we move on to the last element of  
6 their RLA claim.

7                   "That Plaintiff Carter's protected  
8 activity was a substantial or motivating factor in  
9 Audrey Stone's decision to report Plaintiff Carter  
10 to Defendant Southwest for discipline."

11                  All right. Was it a motivating factor in  
12 her decision to report her? Let's talk about that.  
13 And I don't want to go into a lot of depth on this,  
14 because we have belabored the point on it.

15                  Ms. Carter had been opposing the Union for  
16 decades. 2013, while attending a union meeting, she  
17 threatened to decertify the Union. She didn't like  
18 what she heard.

19                  A serious threat in a union -- in a union  
20 shop. We are going to dismantle you, we are going  
21 to tear you down.

22                  No complaints were ever made against  
23 Ms. Carter, to the company. She became a vocal  
24 union objector later that year.

25                  In 2015, she opposed the first TA

1 contract. Still no complaints against Ms. Carter.

2 After the first contract failed,  
3 Ms. Carter became a vocal supporter of Jeanna  
4 Jackson's recall petition.

5 She tried to recall the entire executive  
6 board with a fraudulent document.

7 From there, Ms. Carter proceeded to send  
8 dozens and dozens and dozens of rude messages to  
9 Ms. Stone, all the way through 2017. Calling her  
10 morally bankrupt, corrupt.

11 Now, protected. She's all talking about  
12 it in terms of her union dissent. Still, no  
13 complaints.

14 Ms. Carter engaged in intense and vocal  
15 anti-union speech and activity for at least a  
16 four-year period, all the way through the entire  
17 presidency of Ms. Stone, through a reelection that  
18 she won. No complaints.

19 So I ask you, is it more likely that  
20 Ms. Stone reported Ms. Carter for sending her videos  
21 of aborted fetuses? Or that after years of  
22 opposition, Plaintiff Carter's protected activity  
23 was a substantial or motivating factor in the  
24 decision to report her to Southwest Airlines?

25 If you agree that the report was more

1 likely than not about the videos, turn to question  
2 number 3, answer "no."

3 Let's talk about Title VII claims.

4 What is Title VII claims? Title VII  
5 protects employees -- all employees from  
6 discrimination and harassment in the workplace for  
7 your race, for your gender, for your national  
8 origin, amongst other things.

9 It is an employee-rights statute, one of  
10 the ones that Ms. Carter doesn't believe applies to  
11 Ms. Stone anymore because she's the union president.  
12 That is stripped from her. She couldn't make a  
13 complaint about that.

14 So Ms. Carter believes that the act of  
15 Ms. Stone turning her in to the company was because  
16 of the sincerely-held religious beliefs that were  
17 included in her Facebook messages.

18 Okay. I get that. I mean, frankly, I  
19 don't think it comports much with the other part of  
20 her story, because all I have heard about for most  
21 of this is that -- that Ms. Stone had a beef with  
22 her because she was a union objector, because she  
23 was a union dissenter. And now we built in  
24 religion. Let's look at that, though.

25 Similar to most of the individuals in

1 this -- that you have heard from in this case,  
2 Ms. Stone testified that she was pro life.  
3 Politically pro choice, to be fair, but pro life.

4 So she's asking you to believe that Audrey  
5 Stone, someone who shared her religious views on  
6 abortion, was going to discriminate against her for  
7 her beliefs supporting abortion?

8 I don't see the connection there.

9 What else can we have? We don't have a  
10 single derogatory comment by Ms. Stone about  
11 Ms. Carter's religion.

12 Who knows, we don't what religion  
13 Ms. Stone is. Nobody has asked her.

14 And they are also asking you in this claim  
15 to ignore that she can't tell you about any other  
16 employees who are treated more favorably because of  
17 their religion.

18 Were there other non-Christians that  
19 weren't turned in? No evidence of that. In fact,  
20 there is no evidence of anybody being treated more  
21 favorably than Ms. Stone.

22 Let's talk about reasonable accommodation.  
23 I don't exactly understand the reasonable  
24 accommodation claim against the Union, to be frank  
25 with you. She's urging today -- she's arguing today

1 that she wanted a reasonable accommodation to send  
2 the messages she sent to Ms. Stone. Because she  
3 wanted to say whatever she wanted to her coworkers  
4 as long as it is a sincerely-held, religious  
5 observance, belief or practice. With no limits.

6 The Union doesn't have any conditions over  
7 the terms of and conditions of Ms. Stone's  
8 employment. We can't say what she can or can't do  
9 on social media. Southwest can.

10 What accommodation could we provide? The  
11 only accommodation that we could possibly provide  
12 would be to request that Ms. Stone not turn her in  
13 to the company, to strip her of her employee rights.

14 That is what Ms. Carter is asking you to  
15 do with her religious accommodation claims. She  
16 doesn't believe Ms. Stone, no matter how bad she  
17 felt harassed or discriminated against, should be  
18 able to turn her in.

19 Let's talk about some other practical  
20 matters. She never asked the Union for any sort of  
21 religious accommodation. No, she just sent nasty  
22 videos; hope for the best.

23 So how -- and let's talk about notice.  
24 Ms. Carter is all over the place. How could we know  
25 what she wanted? She told Becky Parker, in the

1 exhibits that Mr. McKeeby showed you, that she  
2 wouldn't do it again.

3 Okay. So if you are not going to do it  
4 again, what accommodation do you need? I don't  
5 know.

6 She told Mike Sims that she would stop.  
7 Okay. So what accommodation do you need? I don't  
8 know.

9 Because of that, we ask you to answer "no"  
10 on all of the religious discrimination claims.

11 I would like to talk to you about damages.  
12 One of the first sections that is going to come up,  
13 and it is an important one, it is on page 21, it  
14 says, "Local five" -- it says, "You may not consider  
15 awarding Plaintiff Carter punitive damages against  
16 Local 556 in relation to her claim of violation to  
17 her claim of violation of the duty of fair  
18 representation under the Railway Labor Act."

19 Okay?

20 Take it off the table. If you were  
21 thinking about it, the judge is telling you right  
22 here, you cannot consider it.

23 It is for legal reasons we are not going  
24 to get into.

25 You may award punitive damages if



1 Plaintiff Carter proves by a preponderance of the  
2 evidence that the individual who engaged in the  
3 discriminatory act or practice was acting in a  
4 managerial capacity.

5 That is not us. That is not talking about  
6 us. That doesn't apply to us. Ms. Stone is not a  
7 manager.

8 And the third prong of it is that he or  
9 she acted with malice or reckless indifference to  
10 Plaintiff Carter's federally protected right to be  
11 free from discrimination.

12 Malice or reckless indifference.

13 Is it malice or reckless indifference if  
14 Ms. Stone turned in Ms. Carter because she felt she  
15 was being harassed? Is that malice or reckless  
16 indifference?

17 The answer to that is no.

18 Now, they give us a little more  
19 instructions if we go down the page. It says, "In  
20 determining whether the decision-maker for Southwest  
21 or Local 556 was a supervisor or manager for Local  
22 556, you should consider the type of authority that  
23 person had over Plaintiff Carter and the type of  
24 authority for employment decisions."

25 Ms. Carter was not a member of the union.

1 The Union had no authority over Ms. Carter.

2 Clearly. She did whatever she wanted.

3 It says, "Or Local 556 authorized that  
4 decision-maker to make." Again, 556 has no  
5 authority over employment decisions at Southwest  
6 Airlines.

7 When you come to a question on punitive  
8 damages, if you should make it that far, the answer  
9 is zero against the Union.

10 The first question you are going to answer  
11 on damages is lost wages.

12 It says, "What sum of money, if paid now  
13 in cash, would fairly and reasonably compensate  
14 Plaintiff Carter for lost wages and benefits, if  
15 any, if Defendant Local 556 caused Plaintiff  
16 Carter."

17 Let's look at the cause language.

18 We don't make decisions at Southwest  
19 Airlines. They made the decision to terminate her.  
20 I would agree rightly so. I really do believe that.

21 And just as a kind of breaking point, the  
22 Union and Southwest Airlines, while we have a good  
23 relationship, we are generally on the other side of  
24 the table negotiating, get heated. We are not  
25 buddy-buddy in that regard.

1 And you heard from Southwest manager after  
2 Southwest manager after Southwest manager, because I  
3 tried to get in and out of there real quick. And  
4 generally only asked them a couple of questions, and  
5 that was, "Did the Union unduly influence your  
6 investigation?" "No." Every one of them.

7 "Did the Union unduly exert any undue  
8 influence or pressure on your decision to terminate  
9 Ms. Carter?"

10 Every last one of them, "No."

11 We didn't cause Ms. Carter's termination.  
12 In fact, it is on the other side of it. We tried to  
13 get her her job back, and we did.

14 If it comes to the issue of back pay, it  
15 says, "Lost wages sustained between March 14, 2017,  
16 and the date of the jury decision," the answer to  
17 that is "zero" to the Union.

18 "Lost benefits sustained between March 14,  
19 2017. And the date of the jury's decision," that  
20 should also be "zero."

21 No matter how you feel about Audrey Stone,  
22 we have a checks-and-balances system built in, and  
23 that checks-and-balances system got her her job  
24 back.

25 The fact that she didn't take it, we

1 should not be held financially responsible for that.

2 Non-economic damages against Local 556 for  
3 Title VII claims.

4 "What sum of money, if any, if paid now in  
5 cash, would fairly and reasonably compensate  
6 Plaintiff Carter for her emotional distress, pain  
7 and suffering, inconvenience, mental anguish, loss of  
8 enjoyment of life that Defendant Local 556 caused  
9 Carter?"

10 Ms. Carter testified that she experienced  
11 these types of damages after she was terminated.  
12 After.

13 Not after she was turned in by Ms. Stone.  
14 After she was terminated. Again, we have no -- we  
15 have no influence on Southwest Airlines's decision  
16 to terminate Charlene Carter.

17 If it comes that far, the answer of  
18 apportionment to the Union should be "zero."

19 Questions 17 through 21 are going to talk  
20 about nominal damages.

21 And what that is, is if you believe there  
22 is some sort of technical violation in this matter,  
23 and Ms. Carter didn't actually suffer any injury,  
24 what might you toss her? We still say "zero" for  
25 that as well.

1                   Finally, last portion of damages, front  
2 pay.

3                   "What sum of money, if paid now in cash,  
4 would fairly and reasonably compensate Plaintiff  
5 Carter for future lost wages, if any, defendant  
6 Local 556 caused Plaintiff Carter?"

7                   Front pay. Into the future.

8                   Again, the Union has no control over the  
9 terms and conditions of Charlene Carter's  
10 employment. Front pay is in lieu of Ms. Carter not  
11 going back to work because Southwest wouldn't let  
12 her back to work.

13                  That is their decision. The Union  
14 shouldn't be held liable for an amount of money  
15 because Charlene and Southwest Airlines figure it  
16 out.

17                  That number should be zero if it comes to  
18 it.

19                  Mitigation questions.

20                  "What did Ms. Carter do to mitigate her  
21 losses in this case?"

22                  I'm not going to belabor the point, but  
23 you heard Ms. Carter applied for a few airlines.  
24 One of them didn't get back to her, and she didn't  
25 really follow up. She still doesn't know why she

1 didn't get any of those positions.

2 But what was Ms. Carter doing before her  
3 termination? She was working full time trying to  
4 get her school up and running. Okay? I commend  
5 that. A lot of educators in my family. I respect  
6 education. I respect teachers.

7 But Ms. Carter was trying to be the  
8 academic coordinator for a new school, line up  
9 curriculum, she doesn't have a teaching certificate,  
10 she doesn't have a -- she doesn't even have a  
11 bachelor's in education.

12 I respect her moxie, but she was not  
13 qualified to be doing what she was doing. She  
14 wasn't. The Union and Southwest shouldn't be held  
15 responsible economically for those decisions. I  
16 respect them, but that is her choice.

17 You have heard all of the evidence today.  
18 You have been instructed on the law now. And you  
19 have heard all of the parties' arguments.

20 Now comes the time when the community, our  
21 community, my community -- born and raised in  
22 Dallas, Texas, I live down the street from this  
23 courthouse -- your decisions affect everybody in  
24 this room. The good folks like y'all, who have  
25 answered the call to this civil jury service, you

1 get to have a say in what is right and wrong. This  
2 is your day. This is important.

3 You should be excited about that. You get  
4 a say in what is fair and what is just. And the  
5 questions raised by this case regarding employee  
6 rights, both the right to expression -- very  
7 important, I don't ever want to downplay that -- and  
8 the right to be free from harassment at work. That  
9 is what you have presented before you. Because both  
10 of those are integral to everyone's lives. We all  
11 work -- well, some of us might be retired, if we are  
12 lucky enough; we will get there one day.

13 But your verdict can stand as the proper  
14 balancing of those interests. Your verdict. It can  
15 make clear that while the law is meant to encourage  
16 conversation in a thriving marketplace of ideas,  
17 that does not extend a blanket protection over  
18 workplace attempts to cause pain and trauma and  
19 harassment to other employees.

20 It doesn't go that far. No matter how  
21 effective plaintiff and her lawyers think the tactic  
22 is.

23 This is a case about someone who demands  
24 that she be allowed to say whatever, whenever, and  
25 however she wants to. No matter the context it is

1 in. No matter the pain it causes.

2 Your verdict can make clear that is not  
3 how it is. That is not how it should be. And that  
4 everybody's rights deserve respect in the workplace.  
5 Not just Charlene Carter's.

6 I look forward to hearing back from y'all,  
7 and thank you for my time.

8 THE COURT: Okay. Quick sidebar.

9 (Thereupon, the following proceedings were  
10 had at sidebar:)

11 MR. PRYOR: Do you have a question for me?

12 THE COURT: Yeah.

13 MR. PRYOR: Can I have an objection as  
14 long as --

15 THE COURT: Does anyone have an objection  
16 that a standard disclosure won't solve?

17 MR. PRYOR: I do not.

18 THE COURT: Okay. I'm going to give you  
19 10 minutes --

20 MR. PRYOR: Thank you.

21 THE COURT: -- because you went up to an  
22 hour. I think that is equitable. So go for your  
23 10 minutes and I'll let you -- do you want the  
24 clip-on mic?

25 (Thereupon, the sidebar was concluded and



1 the following proceedings were held in open  
2 court:)

3 MR. PRYOR: I will stay up here. It  
4 turned out I don't --

5 THE COURT: Okay. He's got his last  
6 10 minutes for the rebuttal.

7 So you may proceed, Mr. Pryor.

8 MR. PRYOR: I'm going to have to read from  
9 my notes, so I will stand here.

10 Okay. Let me respond to some of this.

11 First of all, the arguments about the  
12 affirmative defense, that if you just look at the  
13 video and forget the language -- I trust you are  
14 going to read this. The affirmative defense is  
15 talking if you have got some other reason to report  
16 Ms. Carter that you would have reported for and the  
17 same thing would have happened, and then that is  
18 fine.

19 But you can't separate this communication.  
20 This communication was her religious activity and  
21 her Union activity. If there was something else, if  
22 she -- like they want to accuse everyone else -- if  
23 she embezzled money from the Union, go for it. Make  
24 whatever charges you want.

25 That is not what the affirmative defense

1 is about, that you can separate this communication.

2 But in fact, the video itself was still  
3 religious.

4 And by the way, she didn't report just the  
5 video. And she reported the video as being part of  
6 the religious activity, and she admitted the  
7 anti-union activity.

8 So you can't separate it. I know you will  
9 read the instructions.

10 The damages. I forgot to mention, when  
11 you read these instructions, you will see that --  
12 you are asked the damage questions on the Union, you  
13 are asked the damage questions about Southwest  
14 Airlines, and you are supposed to give the full  
15 measure of damages each time.

16 The judge is telling you, when you read  
17 the instruction, he will take care of it. You don't  
18 have to worry about double recovery. Just say what  
19 her damages were each time.

20 Now, counsel says, Well, the Union can't  
21 be responsible for that.

22 First of all, we are not the manager. Oh,  
23 my gosh. The instruction says "manager of the  
24 Union." She was the president; of course, she's the  
25 manager.

1                   Then he says, well, Southwest Airlines  
2 made the termination decision.

3                   But for the report by the president of the  
4 Union, she would not have been fired. That means  
5 they were a causing effect, that means they are also  
6 responsible for the damages.

7                   Oh -- these are just random points, I took  
8 a few notes.

9                   She's not following up with the airlines.  
10 She interviewed with every airline she could. Most  
11 weren't hiring. She did get an interview or two --  
12 and by the way, she's still got her resumes on file,  
13 she's always -- she got a couple of emails back, but  
14 once again, didn't get the job.

15                  She got stymied at the interview phase.  
16 What do they ask you at your interview? Why did you  
17 leave your last job?

18                  You got fired for workplace bullying? You  
19 are a cyber bully?

20                  Tough to get a job.

21                  And I hear a lot about protections at  
22 work. They didn't even ask if the communications  
23 were at work. But you know, you have heard the  
24 evidence, it wasn't at work. It was part of her  
25 union activity.

1 The last chance agreement.

2 Counsel says he still doesn't know why she  
3 doesn't want to sign that agreement.

4 The agreement says you will be terminated  
5 if anything else happens.

6 And you have got to keep following these  
7 same policies that we just fired you for. So when  
8 you engage in a complaint to your union, when you  
9 want to post something about your religious beliefs,  
10 you are going to get fired.

11 And do you know what else the agreement  
12 says? There is nothing you can do about it. You  
13 agree. If you get fired in the future for whatever  
14 reason, you will take no action against Southwest  
15 Airlines.

16 But he doesn't -- he's telling you he  
17 doesn't know why she didn't sign it.

18 He's talking about how upset the Southwest  
19 Airlines employees were about looking at this video.

20 I'm going to talk about the video at the  
21 end. But the -- she didn't send them to the  
22 Southwest Airlines's employees. She sent it to her  
23 union president to complain about her dues, how her  
24 dues were being used.

25 And counsel for the union actually said

1 she sent it to be mean, to hurt her.

2 She sent -- she told you why she sent the  
3 video. She doesn't want her money going for that.  
4 And she -- whenever she gets a chance, wants to to  
5 tell someone that this is taking a life. That is  
6 the reason she does it, to save babies, not to hurt  
7 people.

8 That is offensive.

9 Oh, that we are selling a conspiracy. No,  
10 we are selling facts. We don't have to sell a  
11 conspiracy.

12 When Ms. Carter sent her communications to  
13 her Union president, she was engaged in union  
14 activity. And when she got reported, she got  
15 reported for engaging in protected union activity.

16 If it had just occurred one time and there  
17 had never been another communication, it wouldn't  
18 matter.

19 But we did think you might like a little  
20 context. And it shows that, wow, they were going  
21 against a bunch of other people. And every single  
22 one of the people they were complaining about, every  
23 single person that they talked with Southwest about  
24 going after, was someone that was opposed to the  
25 current union leadership.

1 And by the way, they didn't put a single  
2 union person on the stand to refute. Charlene,  
3 she's just making facts up.

4 They could have put someone on and said,  
5 no, that -- what she is saying is not true.

6 She told you about Mr. Click; she told you  
7 about Melissa Smith getting a \$300,000 verdict or  
8 whatever.

9 They were welcome to come in and refute  
10 that as to why she's upset with her union. Not one  
11 witness.

12 Exhibit 134, I think he said that's the  
13 recall petition. He said there are whiteouts and  
14 there are dead people. And when you get the report,  
15 the report of the people appointed by the people who  
16 are to be recalled and not a single document  
17 attached to it.

18 Regardless, it doesn't even matter if  
19 Charlene is right or wrong about her union -- I  
20 think she's right -- but she's entitled to complain  
21 about it.

22 Okay. Let's make sure there weren't any  
23 couple of minor points.

24 All right.

25 They have thrown down the gauntlet to you.

1 And it is really odd that the Union is saying that  
2 the company should be able to get involved in union  
3 activity, and apply Southwest's policy to union  
4 activity.

5 The jury instruction on page 13 tells you,  
6 "All union oppositional and organizational activity  
7 is protected unless it, one, constitutes a threat."

8 Nobody found a threat here. Even  
9 Southwest, when they did their investigation, "I  
10 will see you on line," which is her saying, I will  
11 be glad when the Union is not paying for you  
12 anymore, there is no threat.

13 "Or, is a false statement made with  
14 knowledge of falsity."

15 No one has gone to Ms. Carter and said,  
16 you are intentionally making up facts here. This  
17 isn't true. So those don't apply.

18 So now, if it is union activity, it is  
19 activity -- it is protected if it is intemperate,  
20 abusive, insulting, or hyperbolic. That is  
21 protected.

22 And what Southwest has told you, is that,  
23 that doesn't matter, that you are still an employee.  
24 And if someone complains, then we are going to apply  
25 our policies, and our policies require you to be

1 nice to each other. That is exactly what it says.

2 I'm sorry, was there an objection?

3 MR. GILLIAM: Eight minutes.

4 MR. HILL: No objection.

5 MR. PRYOR: Sorry.

6 I'm ready to rumble on this issue. I'm  
7 sorry.

8 This is -- they are throwing down the  
9 gauntlet to you. They are telling you that their  
10 policies trump this law. And it does not. You are  
11 entitled to complain to your union.

12 And in the same manner, their policies do  
13 not trump her desire to express her religious  
14 beliefs. And they tell you, if you want to do that  
15 and you do it in an intemperate manner, our policies  
16 allow you to be fired.

17 They didn't even consider it, though. And  
18 they certainly are standing here telling you that is  
19 what they are going to do.

20 And when he said, I'm here asking for  
21 \$2 million, that is not what I said.

22 I said that is not enough.

23 That is a speeding ticket.

24 That will not get their attention to  
25 follow what the law requires and to protect people.



1 And quit using it to, as Ms. Carter talked about in  
2 her president's message -- or Ms. Stone, the  
3 president of the Union, says that social media  
4 policy is being used to take away our rights.

5 Of course, that was until the Union  
6 decided to start using themselves -- using that policy  
7 themselves to take away rights.

8 But no doubt about it, she -- one of their  
9 witnesses said they have hundreds of complaints  
10 about social media policy.

11 They are applying this however they want,  
12 to whatever employee they want.

13 And everything is workplace. You are down  
14 in Cabo and you are on the beach, that is workplace.  
15 They have sat here and told you, we are going to  
16 apply these workplace policies. We are asking you  
17 to read these instructions. Follow the law. Follow  
18 these facts.

19 Ms. Carter's rights are entitled to be  
20 protected.

21 She engaged in union activity. It is  
22 protected.

23 She engaged in religious speech. It is  
24 protected.

25 Was it abusive? That is opinion. But

1 even if it is abusive, even if it is -- whatever the  
2 definition from Webster I looked at -- it is as over  
3 the top as you can come up with abusive, it is  
4 protected unless it is a threat of physical  
5 violence, unless it is illegal, unless it is  
6 defamatory.

7 And she engaged in that. We ask you to  
8 protect that. This is her chance for that.

9 And I am glad for you, too, that you,  
10 first of all, don't have to listen to us anymore.  
11 And that you can finally talk to each other. And we  
12 do all appreciate your service. Thank you.

13 THE COURT: Thank you, Mr. Pryor.

14 Any need for a sidebar?

15 MR. McKEEBY: Yes.

16 (Thereupon, the following proceedings were  
17 had at sidebar:)

18 MR. McKEEBY: It's specifically to the  
19 comment about communications to subsequent employers  
20 and having to tell them about the reason she was  
21 terminated, there is nothing in the record about  
22 that. And I think that warrants a specific --

23 MR. PRYOR: I didn't say she did. I said,  
24 "Tell me what happens when you go for a new job."

25 Everybody knows they ask you that

1 question. That is a comment on the evidence.

2 MR. McKEEBY: That was making up evidence,  
3 is what it is, and I think it warrants a specific  
4 instruction.

5 THE COURT: Okay. So I will make a  
6 reference to it. I'm not going to dwell on it.

7 MR. PRYOR: To that?

8 THE COURT: Well, but it is still in the  
9 record. Right?

10 MR. PRYOR: It is a comment on the  
11 evidence, your Honor. If we are going to that, then  
12 I have got a list of their comments on the evidence.

13 MR. McKEEBY: That is not a comment on the  
14 evidence.

15 MR. PRYOR: I did not say she went to it.  
16 I said, when you go to look for a job and they  
17 interview you, what do they ask you?

18 That is really -- I don't think I have  
19 stepped over a line. And to tell the jury that I  
20 stepped over the line on that? It is a comment.

21 THE COURT: I'm not going to dwell on it,  
22 but I'm going to vaguely reference it.

23 MR. PRYOR: Dwell on it, you're gonna  
24 mention -- it is dwelling by being the only thing  
25 you mention.

1 THE COURT: Dwelling is spending an hour.  
2 Right?

3 MR. McKEEBY: And I'm not asking you to  
4 tell them that he stepped over the line.

5 THE COURT: So I will say this, it is the  
6 one thing in your closing that I wrote down.

7 MR. PRYOR: It was so effective, Judge.

8 MR. McKEEBY: That's the only thing I  
9 wrote down too.

10 MR. PRYOR: All right. I get -- I object.

11 THE COURT: And again, I'm not --

12 MR. PRYOR: That's all I can do.

13 THE COURT: I get that. I'm not going to  
14 beat you up over it. I will overrule your  
15 objection. I will mention it as briefly as I can.  
16 And I will send them back to deliberate.

17 MR. McKEEBY: That's fine, Your Honor.

18 (Thereupon, the sidebar was concluded and  
19 the following proceedings were held in open  
20 court:)

21 THE COURT: You are getting the case. We  
22 are so excited. Okay. So I'm going to give you my  
23 standard disclaimer. This is something I said after  
24 opening argument from the lawyers.

25 Remember, lawyer argument isn't law or

1 evidence. Right? The law is what I read to you  
2 this morning in the jury instructions. You have a  
3 copy with you.

4 It is also not evidence. There was a  
5 comment that someone brought up about interviewing  
6 for other jobs, and so, you have got to go back and  
7 check those comments against the record and figure  
8 out what is evidence from what witnesses said, what  
9 documents showed.

10 What I will say is, tomorrow and Friday,  
11 assuming y'all are deliberating then, we are going  
12 to have another judge -- not me -- who is presiding  
13 over this case. I have got a conference that I am  
14 previously booked at that I am supposed to speak at  
15 out of state.

16 But Judge Kinkeade has graciously agreed  
17 to preside over this case. He is older than I am,  
18 wiser I am. I have got a picture of him here for  
19 you. You can see this is Judge Kinkeade I've got in  
20 a headlock. He is awesome.

21 So you will see Judge Kinkeade if you come  
22 back into the courtroom on Thursday or Friday.

23 If you are deliberating into Monday, I'm  
24 back in action and I'm your judge again then.

25 Your first thing when you go back before

1 you go to lunch, pick a foreperson and a schedule at  
2 least for today. The only reason I ask you about  
3 picking a schedule is, remember, we operate on your  
4 timetable now. And I need to tell them when they  
5 need to be near the courtroom. And that is any time  
6 that you are not at lunch or haven't left for the  
7 day. Right?

8 So if you say you want to stay till 6,  
9 fine by us. Just tell us what you want to do. And  
10 I will also make sure the air conditioners are on  
11 and the lights are on. Because in government  
12 buildings, sometimes they turn off between 5 and 6.

13 One side note on deliberations. You have  
14 got to all be deliberating. So if one of you has to  
15 go to the bathroom, pause those deliberations and  
16 just take a break.

17 Okay. So you will get your exhibits soon;  
18 in electronic form pretty quickly, and hard copy a  
19 little bit after that.

20 We wish you the best. We thank you for  
21 paying such careful attention to this case. It is  
22 important to everyone involved.

23 So now I'm going to modify my last  
24 instructions to you.

25 You can talk to your fellow jurors about

1 this case now. You can't talk to anyone else about  
2 the case. And you can do as much research on the  
3 evidence as you want, you just can't do any outside  
4 research.

5 With that, let's all rise for the jury.

6 (The jurors exited the courtroom.)

7 THE COURT: Okay. Now, see, I was trying  
8 to be soft. I didn't even say it was Pryor and what  
9 he said was not evidence.

10 MR. PRYOR: Hey, your Honor, I didn't even  
11 hear what you said. I thought you forgot, but  
12 apparently you didn't.

13 THE COURT: I was trying to be nice,  
14 right?

15 MR. PRYOR: What did you say?

16 THE COURT: I said that lawyer argument is  
17 not evidence. So for example, it came up that  
18 someone said "interviews with others," and you have  
19 got to go back and compare that against the  
20 evidence.

21 MR. PRYOR: Fair enough.

22 THE COURT: Okay. So remember to get your  
23 cell phone numbers to Mr. Frye if you haven't  
24 already. We had talked about if you have got a  
25 lawyer within 15 minutes of the courthouse, that is

1 good enough for today.

2 As soon as we get a jury note that they  
3 have picked a foreperson or a schedule for today, we  
4 will email that to y'all, but we will see if anyone  
5 is in the courtroom. If you are here, we will just  
6 give it to you right then and there.

7 And if we get a jury note or verdict back  
8 in later on today, obviously we would scan and email  
9 the jury note so you can see it on your way back  
10 here. We will call you if no one from your team has  
11 showed up.

12 If it is a verdict, we don't scan it and  
13 email it. I have got to publish it in open court  
14 once the foreperson gives it to me.

15 As far as the last thing I have on my  
16 list, jurors talking to y'all. I ask y'all to not  
17 contact them, but I am going to tell them if they  
18 want to talk to y'all, they can after their  
19 deliberations are over and I have accepted a verdict  
20 from them.

21 I think y'all have been professional  
22 throughout this case and have earned that right. I  
23 don't always give that right in my cases, but I  
24 think y'all have earned it.

25 I think y'all have done a great job trying



1 this case. The jury trial is a dying art. And  
2 y'all have done an excellent job the last two weeks  
3 of preserving that. We have got a lot of folks in  
4 the courthouse who are here for the summer who are  
5 interning who have been watching this trial, and so  
6 you are doing a good job helping show them what an  
7 effective trial is like.

8 So thank you. Give us five stars on Yelp  
9 for the Dallas courthouse, if you can.

10 Any other questions, thoughts, concerns?

11 MR. PRYOR: Do you meet with counsel and  
12 discuss the verdict before it is read in open court?

13 THE COURT: So I don't, but here is what I  
14 will say on this one -- and I will suggest this to  
15 Judge Kinkeade too -- is normally I just check it to  
16 make sure that it is legally compliant before I  
17 publish it. And then I publish it, then I accept it  
18 and discharge them.

19 This one could be tricky, right, depending  
20 on what some of the answers are. So if it is me who  
21 is taking the verdict, I'm still going to check it  
22 to see if I think it is legally compliant. I will  
23 publish it either way.

24 Before then, before I excuse them, I might  
25 call a sidebar and see if y'all agree with me that

1 we have a legally compliant verdict. Because we  
2 have all talked about in the charge conference  
3 yesterday several ways in which there might be  
4 issues we can't unravel as a matter of law in  
5 post-verdict brief.

6 MR. PRYOR: And that is really why I was  
7 asking. I kind of like just finding out in the  
8 courtroom.

9 But with this verdict form, you know, I  
10 guess if you look at it and you decide on its face  
11 you don't see any problem, just wait and hear in  
12 court.

13 But I was concerned that I might not get  
14 so involved, that by the time you have read it and  
15 we are done, I see a problem.

16 THE COURT: Yeah. And I will say this, my  
17 view is that if I publish the verdict, and even if I  
18 accept it, that is not the same as entering judgment  
19 on it.

20 The thing I don't want to do is excuse the  
21 jury if we think there is more work that they need  
22 to do based on a conflict in answer or something  
23 thing like that.

24 So, you know, I'm inclined to publish  
25 it -- well, I might not accept it. I might talk to

1 y'all before I accept it.

2 MR. PRYOR: Okay.

3 THE COURT: Does that make sense?

4 MR. PRYOR: Thank you.

5 THE COURT: So publish but not accept or  
6 excuse until we have had a chance to talk at a  
7 sidebar.

8 If it is a really long conversation, we  
9 will either send them back to the deliberation room  
10 or we would go back to the conference room.

11 All right. I will pass this tip on to  
12 Judge Kinkeade, assuming we don't have a verdict in  
13 today.

14 Any other questions?

15 This was great. Thank y'all. Y'all are  
16 phenomenal lawyers. So thanks for putting on a good  
17 case for the jury. It is important to everyone and  
18 important to them, too.

19 All right. Thank you. Court is in  
20 recess.

21 (Recess.)

22 THE COURT SECURITY OFFICER: All rise.

23 THE COURT: Thank you.

24 You can be seated.

25 Mr. Pryor, you are all alone.

1 Can we do appearances and make sure we  
2 have one lawyer for each side?

3 For the plaintiff, can you go?

4 MR. PRYOR: I couldn't hear you. I'm  
5 Bobby Pryor, if you are asking who is here for  
6 plaintiff.

7 THE COURT: Yes. You nailed it. That was  
8 a great guess.

9 And for Southwest?

10 MR. McKEEBY: Paulo McKeeby and Brian  
11 Morris for Southwest.

12 THE COURT: And the Union?

13 MR. GREENFIELD: Adam Greenfield and  
14 Edward Cloutman, III on behalf of TWU Local 556.

15 THE COURT: We have got our Juror Note No.  
16 1 [sic]. Y'all have a copy physically or email.

17 This may be the only jury note that we can  
18 actually give a concrete answer to satisfy them and  
19 us.

20 "Missing Exhibit 41, termination letter."

21 I think, Mr. McKeeby, you and I were  
22 thinking the same thing. It came in as 115, not as  
23 41.

24 MR. McKEEBY: Right. 41 is in my  
25 notebook. This is a product of us doing joint

1 exhibits and having some overlap. I just misspoke  
2 and said 41, instead of 115.

3 So it should be there.

4 THE COURT: And it is.

5 So I checked the drive. I haven't seen  
6 the hard copies, or laid eyes on them. But if it  
7 matches up to the exhibits we gave them on the  
8 drive, and 115 is there, and it is on the exhibit  
9 list.

10 So should I say along the lines of the  
11 termination letter came into evidence as Exhibit  
12 115, even though it was referenced at one point in  
13 trial as Exhibit 41?

14 Fair enough?

15 We are going to give them a good answer,  
16 and they will like it.

17 That's awesome. Okay.

18 So I will say that and we will email y'all  
19 a copy of my note that says that going back to them.  
20 And then thanks for being close to the court house.

21 They will keep plugging away and we will  
22 be on standby.

23 Anything else that we need to talk about?

24 MR. PRYOR: No. Thank you, Judge.

25 THE COURT: Thank y'all. Court is in

1 recess.

2 (Recess.)

3 THE COURT SECURITY OFFICER: All rise.

4 THE COURT: Thank you.

5 You can be seated.

6 Okay. So we have got Juror Note No. 2,  
7 that I have scratched through and wrote Juror Note  
8 No. 3, because our first note was really the  
9 foreperson.

10 Let's just do appearances right quick to  
11 show who all is here.

12 Mr. Gilliam.

13 MR. GILLIAM: For plaintiff, Matthew  
14 Gilliam and Matt Hill.

15 MR. McKEEBY: For Southwest, Paulo McKeeby  
16 and Brian Morris.

17 THE COURT: Thank you.

18 MR. GREENFIELD: For the Union, Adam  
19 Greenfield and Edward Cloutman, III.

20 THE COURT: Thank you.

21 Okay. So their question says, "Question  
22 7, No. 1, the word "accommodate." We are looking at  
23 Exhibit 10, Southwest Airlines, and the jury charge  
24 page 16. We are needing further clarification of  
25 accommodation from the Union.

1 Two, is listening to a complaint  
2 considered an accommodation?"

3 Thoughts?

4 MR. GREENFIELD: I'm not sure I can make  
5 much sense of it, your Honor.

6 THE COURT: So I had a head start. I'm  
7 not sure I'm much ahead of y'all. But let me what I  
8 think. So I can't tell if No. 1 is a statement or a  
9 question.

10 But from what I can tell, so we have, page  
11 16 of the charge is the in-depth definition of the  
12 accommodation claim as to Southwest.

13 The related instruction for the  
14 accommodation claim as to the Union is on page 18  
15 and just a couple of lines on 19. It is not as  
16 long.

17 It is not as long and surprisingly, we  
18 don't really have any accommodation claims against  
19 the Union to draw a lot of case law from, surprise,  
20 surprise. But there are plenty of accommodation  
21 claims against employers, which is why we had a  
22 couple of pages of content on Southwest and not as  
23 much as to the Union.

24 I think the closest thing we get to on  
25 actually defining what an accommodation might be in

1 the Union context comes at page 18, in the second  
2 full paragraph on 18, where the second sentence and  
3 it says: "An accommodation means allowing the  
4 employee to engage in her religious practice or  
5 observance despite the Union's normal rules to the  
6 contrary."

7 And that is as close as we get to defining  
8 what an accommodation is as to the Union.

9 So if the jury is really wondering is  
10 listening to a complaint an accommodation, the short  
11 answer is we don't have a case or a pattern that  
12 says that, or that says that is not true. All we  
13 have is the sentence that I just said, in the  
14 section that I just said.

15 I will say one more bit. Going back to my  
16 earlier statement on is 1 a statement or a question.  
17 We know they were looking at Exhibit 10.

18 Exhibit 10 is the Southwest exhibit that  
19 talks about disability accommodations and at the end  
20 it talks about the ACT team, right? You send a  
21 workplace accommodation request to the ACT team.

22 I can't tell if they are trying to figure  
23 out if there is a similar exhibit for the Union.

24 The short answer would be, we put all of  
25 the evidence in, if it is there, it is there. I



1 don't think there is a similar thing for the Union,  
2 nor do I think there has to be.

3 But I think, in my mind, my 30,000-foot  
4 view thinking is all of the evidence is in. And we  
5 have given them every bit of information that the  
6 law allows to give on Unions and accommodation in  
7 Part C-4 on pages 18 and 19.

8 I don't know what else we could do. But I  
9 would love to hear any fresh thoughts from y'all on  
10 this.

11 Any thoughts from -- I guess, it is a  
12 Union question first. So instead of asking Carter  
13 first, Mr. Greenfield, have you got any ideas on  
14 that?

15 MR. GREENFIELD: I don't have any bright  
16 ideas at the moment, other than I would be inclined  
17 to agree with your Honor, that they have what they  
18 have.

19 But if you give me a few more minutes, I  
20 might come up with something smart.

21 THE COURT: Sure. Well, I'm going to ask  
22 everyone. And then I'm going to take a crack to  
23 putting pen to paper on something and show it to  
24 y'all.

25 So let me ask, does anyone else have

1 thoughts or interpretations on what is going on?

2 MR. GILLIAM: I think we tend to agree,  
3 your Honor. I think that maybe it would -- I think  
4 falling back on the charge and the instructions is  
5 probably -- that is our inclination, having them  
6 read the charge and pointing them back to the charge  
7 and the instruction.

8 THE COURT: And it is where we always end  
9 up unless we forgot something in the charge, right?

10 And the jury always finds this  
11 unsatisfying because they have a question because  
12 the charge didn't have a level of detail that they  
13 were hoping for. I always feel bad in a  
14 circumstance where they are asking a question and  
15 there is sort of hole in the law. We have given  
16 them all that we can.

17 So what I would I try to do, if I'm  
18 wordsmithing this, is try to tell them that we have  
19 given the maximum amount of definition that the law  
20 allows us to give. There are times where I've just  
21 said, hey, it is on pages 18 and 19. But they  
22 wanted more.

23 If we tell them 18 and 19 is all we can  
24 give you, it may leave them unsatisfied but at least  
25 they know we have given them all we could.

1                   Let me ask if Southwest if they any  
2 thoughts? I know it is as to the Union, not  
3 Southwest. I'm all ears for what anybody has to  
4 say.

5                   MR. McKEEBY: Sorry to disappoint. I  
6 don't have any thoughts.

7                   MR. GILLIAM: Your Honor, do you see any  
8 concerns with pointing them to the definition of  
9 accommodation on -- what page is that?

10                  MR. HILL: Sixteen.

11                  MR. GILLIAM: Sixteen.

12                  THE COURT: Eighteen. Sorry.

13                  Yes, on 16. But that is the Southwest  
14 definition. But I don't have a problem zeroing in  
15 on the definition that I read earlier, as long as we  
16 make sure that the definition comes from the charge  
17 itself saying Section C-4, page 18.

18                  If we want to guide them, that is the most  
19 we can guide them. That is what a definition is.

20                  I don't know. I'm open to thoughts and  
21 considerations on it.

22                  MR. GREENFIELD: I mean, paragraph 2 says  
23 what it is. Paragraph 3 says how you get there.

24                  THE COURT: Yes. I think that is right.

25                  MR. HILL: I have just noticed a

1 discrepancy here. They say they are trying to  
2 figure out -- in paragraph 1, they say, they are  
3 looking at page 16 for the definition of  
4 accommodation, and then they say they are talking  
5 about the Union.

6 The page 16 definition is, of course,  
7 Southwest. If we give them the direct definition  
8 that -- if we point them to 18 as the accommodation  
9 definition for the Union, even though it looks real  
10 similar, I think that may solve their problem for  
11 them.

12 THE COURT: I'm hoping that is true.

13 That is the easiest solution to the  
14 problem.

15 I guess what we could do is we are short  
16 answering it that way. And if they come back with  
17 another question, we know we weren't right in our  
18 interpretation, if there is a follow-up on that.

19 THE COURT: Okay.

20 Okay. The sentence I have got so far is,  
21 the most guidance the law allows me to give you on  
22 accommodation from the Union is Part C-4 on pages 18  
23 and 19 of the instructions.

24 The question is, do we do more than that?

25 MR. HILL: I would go one with that

1 definition you read earlier. It is very  
2 enlightening as what an "accommodation" means.

3 MR. GREENFIELD: I think they need the  
4 whole thing, your Honor. I don't think it would be  
5 appropriate.

6 THE COURT: And I started to put in that  
7 sentence, then I started to put in the third  
8 paragraph. I realized I was copying and pasting  
9 from the whole section. So that led me back to  
10 pages 18 and 19.

11 My inclination would be to do that, if we  
12 get a follow-up question. If it is more  
13 complicated than that -- I think if they really do  
14 have a question on evidence, hey, is there anything  
15 similar to Southwest 10 or the Union? I think maybe  
16 we cross that bridge once we make sure we direct  
17 them to the right place, pages 18 and 19.

18 Does that sound okay?

19 So I think I'm backing to my first  
20 sentence, and I will read that again. The most  
21 guidance the law allows me to give you on an  
22 accommodation from the Union is on Part C-4 on pages  
23 18 and 19 of the instructions.

24 Does anyone want to object to that?

25 I am fine, if y'all do.

1 MR. McKEEBY: No objection from Southwest.

2 MR. GREENFIELD: No objection.

3 MR. GILLIAM: No objection from plaintiff.

4 THE COURT: Okay. So I will send this.

5 And you may want to be close by, because

6 there may be another question on its heels, right?

7 I'm getting this language off to Mr. Frye.

8 We are going to format it and get it on to

9 Question No. 3. And we all stay tuned, if my

10 computer stops cycling.

11 Sent. Okay. Now I'm going back into

12 recess and we will stay tuned.

13 Thank you for staying and having such

14 quick access to the courthouse. I'm sorry to say

15 that we have needed it for today, but we may need it

16 for the rest of the day.

17 All right. Court is in recess.

18 THE COURT SECURITY OFFICER: All rise.

19 (Recess.)

20 (Proceedings adjourned at 6:00 p.m.)

21

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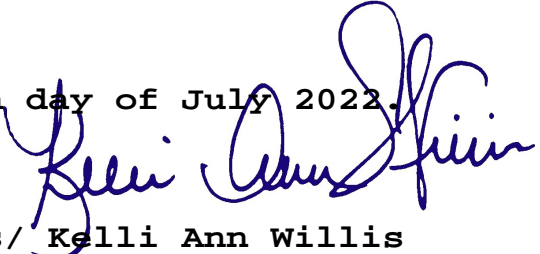
25

C E R T I F I C A T E

I, Kelli Ann Willis, RPR, CRR, CSR  
certify that the foregoing is a transcript from the  
record of the proceedings in the foregoing entitled  
matter.

I further certify that the transcript  
fees format comply with those prescribed by the  
Court and the Judicial Conference of the United  
States.

This 14th day of July 2022.

  
s/ Kelli Ann Willis  
Official Court Reporters  
Northern District of Texas  
Dallas Division

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<hr/> <b>\$</b> <hr/>			<b>21-U</b> 2084:18
<b>\$10</b> 2109:14,16		<b>19</b> 2060:1,11,19,21 2061:3,5 2197:15 2199:7 2200:21,23 2202:23 2203:10,17,23	<b>21-V</b> 2084:19
<b>\$100,000</b> 2108:1 2110:21	<b>115</b> 2194:22 2195:2,8, 12	<b>1996</b> 2017:21	<b>22</b> 2019:12 2061:24 2062:1 2085:24
<b>\$17,000</b> 2141:17	<b>119</b> 2133:11		<b>22nd</b> 2085:11,16 2086:3,9
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